

FOOD AND DRUGS
ADMINISTRATION

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FOOD AND DRUGS

ADMINISTRATION

A PRACTICAL HANDBOOK FOR THE
USE OF PUBLIC HEALTH OFFICIALS,
STUDENTS AND OTHERS INTERESTED
IN FOOD AND DRUGS

BY
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and "Sanitary Administration"*

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THE ENGLISH AND EMPIRE DIGEST.

After each case mentioned in the Table of Cases and in the text, in addition to the usual citation of the report, there will be found a reference to the volume, page and number at which the case appears in the Digest. Thus :

Hunt v. Richardson, [1916] 2 K.B. 446 ; 25 Digest 128, 492.

THE ALL ENGLAND LAW REPORTS.

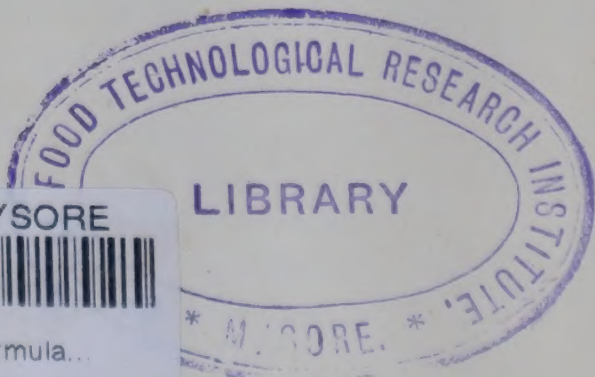
Cases heard since 1936 are reported in the All England Law Reports, which are cited as follows :

Churcher v. Reeves, [1942] 1 K.B. 172 ; 1 All E.R. 69.

HALSBURY'S COMPLETE STATUTES OF ENGLAND

After each reference to a section of an Act there will be found a reference to the volume and page of Halsbury's Complete Statutes of England at which the text is printed in full. Thus :

Food and Drugs Act, 1938, s. 100 ; 31 Halsbury's Statutes 313.



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PREFACE.

LOCAL authorities and their sanitary officers are very much concerned in the administration of the law affecting food and drugs. Until 1938, the law relating thereto was to be found in a number of Acts of Parliament, and a wide range of Orders and Regulations made under those Acts. The Food and Drugs Act, 1938, brought within the compass of one statute a mass of legislation relating to this subject. Unfortunately, the second World War has prevented local authorities from administering the Act to the full extent desired. There is every hope, however, that with the gradual return to a more normal state of affairs, sanitary officers will be able to devote the requisite amount of time to food and drugs administration.

The present volume, which is prepared on similar lines to my books on "Housing Administration" and "Sanitary Administration," and is designed as a companion work, is intended primarily for my colleagues in the local government service and for students preparing for the various professional examinations. It is not intended as a substitute for the standard legal text-books. I hope, however, that it may find a place on the lawyer's book-shelf, as I feel sure it will be of assistance to him in appreciating the administrative side of food and drugs work. As in my previous books, I have included the full text of the more important sections of the statutes, so that the reader may make his own précis if he wishes to do so. Every effort has been made to follow the correct sequence of events when dealing with the various sections of the work. I trust, therefore, that the busy official, faced with an unusual or new problem, will find his way carefully and surely through the legal and administrative maze to a successful conclusion.

The term "food and drugs" has been liberally interpreted. In addition to the subjects dealt with in the Food and Drugs Act, 1938, reference has been made to other statutes dealing directly or indirectly with matters concerning food and drugs. With this object in view, I have included chapters on diseases of animals, pharmacy and poisons, fertilisers and feeding stuffs, and the grading and marking of agricultural produce, which are normally dealt with by food and drugs authorities, and I trust their inclusion in the present volume will meet the need, which I believe exists, for a text-book covering these subjects.

"Food and Drugs Administration" completes the administrative work of the sanitary officer, and with "Housing Ad-

ministration " and " Sanitary Administration," should form a complete guide to the official concerned with these matters. I should like to take this opportunity of thanking my many friends in the local government service for their kindly reception of my previous works and trust the new book will have an equal appeal. It is proposed to keep the three books up to date by the issue of supplements and revised editions as found necessary, and I should welcome suggestions from readers for improvements in future editions or the correction of any mistake which I may have overlooked.

I am indebted to the Controller of His Majesty's Stationery Office for permission to reproduce extracts from official publications.

STEWART SWIFT.

OXFORD,

April, 1946.

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FOOD AND DRUGS ADMINISTRATION.

PART I.

CHAPTER I.—FOOD AND DRUGS LEGISLATION AND LEGAL PROCEDURE.

INTRODUCTION.

The necessity for the maintenance of an efficient system of supervision and control of the public food supply cannot be over-estimated. Food and drugs administration is, therefore, one of the most important sections of the environmental health services. Without food, life cannot be long sustained. For the maintenance of good health, it is essential that the food supply should not only be sufficient in quantity but suitable in quality and nutritive value. The adequacy and nature of the food consumed is a matter for the dietitian, who is concerned with matters of nutrition, and is a subject of primary significance, but the protection and control of the food supply is of equal importance. It is the purpose of the present volume to deal with the various enactments passed by Parliament, together with the subordinate legislation authorised by such statutes, which are designed to secure a food supply which will be pure, wholesome, free from disease, and of proper nutritive value.

From early times, laws were passed regulating the food supply, especially with respect to such commodities as meat, bread, beer and other staple articles of diet(*a*). So far as England and Wales are concerned, the first comprehensive statute dealing with this subject was the Sale of Food and Drugs Act, 1875, which was amended and extended by numerous other Acts dealing with food and drugs generally or particular foodstuffs (*e.g.* Margarine Act, 1887, Butter and Margarine Act, 1907, etc.). These earlier statutes were repealed and largely re-enacted in the Food and Drugs (Adulteration) Act, 1928(*b*), which was itself repealed and re-enacted with amendments and extensions, in the Food and Drugs Act, 1938(*c*).

(*a*) See "*English Sanitary Institutions*," by John Simon, London, John Murray, pp. 86 *et seq.*

(*b*) 8 Halsbury's Statutes 884-908.

(*c*) 31 Halsbury's Statutes 249.

THE FOOD AND DRUGS ACT, 1938.

The Food and Drugs Act, 1938 (in this volume referred to as "the Act of 1938"), was drafted(*d*) by the Local Government and Public Health Consolidation Committee, whose Third Interim Report, dealing with Food and Drugs, was published in 1937(*e*). Besides repealing and re-enacting earlier Acts, it contained a number of important amendments and additions. The Acts repealed included the Food and Drugs (Adulteration) Act, 1928(*ee*), Knackers Acts, 1786 and 1844(*f*), Bread Act, 1836(*g*), Milk and Dairies (Consolidation) Act, 1915(*h*), Milk and Dairies (Amendment) Act, 1922(*i*), and the Artificial Cream Act, 1929(*k*).

The Act of 1938 is divided into six Parts as follows :

- Part 1—General Provisions as to food and drugs ;
- Part 2—Provisions as to milk, dairies and artificial cream ;
- Part 3—Provisions as to other kinds of food ;
- Part 4—Provisions as to importation ;
- Part 5—Markets, slaughterhouses and cold-air stores ; and
- Part 6—General and Miscellaneous.

The various provisions of the Act of 1938 are enforced by local authorities and county councils, as to which see Chapter 2, *post*, p. 17. It should be noted that some of the provisions of the Act of 1938 are enforced by "local authorities," others by "food and drugs authorities," and care must always be taken to distinguish between the functions of the two types of authorities.

SUBORDINATE LEGISLATION DEALING WITH
FOOD AND DRUGS.

Byelaws.—Local authorities (see *post*, p. 18) are authorised to make byelaws under the Act of 1938 for the following purposes :

Section.	Subject matter.	Reference to text.
		Page
15	With respect to the handling, wrapping, etc., of food, and the sale of food in the open air	317
56	Markets	483
58	Slaughterhouses and knackers' yards	269
60	Public slaughterhouses	272

(*d*) See Cmd. 5629. (*e*) Cmd. 5628. (*ee*) 8 Halsbury's Statutes, 884–908.
 (*f*) 13 Halsbury's Statutes 507, 517. (*g*) 8 Halsbury's Statutes 851.
 (*h*) 8 Halsbury's Statutes 864. (*i*) 8 Halsbury's Statutes 879.
 (*k*) 8 Halsbury's Statutes 908.

The Minister of Health is the confirming authority as respects byelaws made under the Act of 1938(*l*). The provisions of section 277, Public Health (London) Act, 1936(*m*), apply, with any necessary adaptations, to byelaws made under the Act of 1938, by the Common Council of the City of London and the port health authority of the Port of London, or, by virtue of an order of the Minister of Health made under section 76 of the Act of 1938 (see *post*, p. 30), by the port health authority(*n*). Byelaws made under an Act repealed by the Act of 1938, which could have been made under a corresponding provision of the Act of 1938, are continued in force by subsection (4) of section 101 of that Act(*o*). As to byelaws generally, see the author's "Sanitary Administration"(*p*).

Orders and Regulations.—The following sections authorise the making of Regulations under the Act of 1938 :

Section.	Subject matter	Reference to text
		Page
8	Food Regulations	159
20	Milk and Dairies Regulations	362
21	Milk (Special Designations) Regulations	411
23	Presumptive evidence of adulteration of milk	121
30	Bread and Flour Regulations	223

Food Regulations under section 8, *supra*, are made by the Minister of Health ; *Milk and Dairies Regulations* under section 20 will be made jointly by the Minister of Health and the Minister of Agriculture(*q*) ; *Milk (Special Designations) Regulations* under section 21 will be made jointly by the Minister of Health and the Minister of Agriculture *in respect of raw milk*(*r*), otherwise by the Minister of Health ; *Regulations as to presumptive evidence of adulteration of milk* under section 23 are made by the Minister of Agriculture ; and *Bread and Flour Regulations* under section 30 are made by the Minister of Health.

Section 92 of the Act of 1938, *infra*, details the general

(*l*) Sect. 91(1), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 308.

(*m*) 30 Halsbury's Statutes 590.

(*n*) Sect. 91(2), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 308.

(*o*) 31 Halsbury's Statutes 317.

(*p*) Second Edition, London, Butterworth & Co. Ltd., pp. 5 *et seq.*

(*q*) Sect. 1, Food and Drugs (Milk and Dairies) Act, 1944 ; 37 Halsbury's Statutes 300.

(*r*) *Ibid*, sect. 2(2) ; 37 Halsbury's Statutes 301

provisions with respect to regulations made under the above provisions.

Section 92, Food and Drugs Act, 1938.—Supplementary provisions as to certain regulations.

- (1) This section applies to all Food Regulations, Milk and Dairies Regulations and Bread and Flour Regulations made under this Act.
- (2) Without prejudice to the generality of the provisions under which they are made, the regulations may—
 - (a) provide for the taking and examination of samples ;
 - (b) apply, as respects matters to be dealt with by the regulations, any provision in any Act (including this Act) dealing with the like matters, with the necessary modifications and adaptations ;
 - (c) provide for an appeal to a court of summary jurisdiction against any refusal or other decision of an authority by whom the regulations are to be enforced and executed ;
 - (d) authorise the making of charges for the purposes of the regulations or for any services performed thereunder, and provide for the recovery of charges so made ;
 - (e) contain provisions for imposing on persons offending against the regulations penalties not exceeding the maximum penalties specified in section 79 of this Act ;
 - (f) make such ancillary and incidental provisions as appear to the Minister to be necessary or desirable.
- (3) The regulations shall specify the authorities, whether county councils, local authorities, Food and Drugs authorities or port health authorities, by whom they are to be enforced and executed, and may provide for the giving of assistance and information by any authority concerned in the administration of the regulations, or of this Act, to any other authority so concerned for the purposes of their respective duties thereunder.
- (4) Before making the regulations, the Minister shall consult with such representative organisations as he thinks fit.
- (5) The regulations shall be laid before Parliament as soon as may be after they are made.
- (6) Any expenses incurred by a county council in the enforcement and execution of the regulations shall, if the Minister by order so directs, be defrayed as expenses for special county purposes charged on such part of the county as may be provided by the order, but any such order may be revoked or varied by a subsequent order.

It will be observed that all regulations made under the Act of 1938 must be laid before Parliament (see subsection (5), *supra*) and these provisions, together with those contained in section 319 of the Public Health Act, 1936(s), necessitate such regulations being laid before each House of Parliament for thirty days. It should be noted that under subsection (2), *supra*, it is possible to include in regulations provisions similar to those contained in sections 10, 18, 37 and 61 (see *post*, p. 8), with respect to *compensation* ; and in sections 83 and

(s) 29 Halsbury's Statutes 524 ; incorporated in the Food and Drugs Act, 1938, by sect. 96.

84 (see *post*, p. 13 and p. 175), with respect to *certain defences available* in proceedings taken under the Act of 1938.

The following regulations have been made under the Act of 1938 :

Section.	Title.	Reference to text.
		Page
23	Sale of Milk Regulations, 1939, S.R. and O., 1939, No. 1417	121
66(2)	Public Analysts Regulations, 1939, S.R. and O., 1939, No. 840	39

Owing to the war emergency, it has not been possible to make more new regulations under the Act of 1938(ss), but in accordance with the provisions of subsection (3) of section 101 of the Act of 1938 (see *post*, p. 160), orders and regulations made under any enactment repealed by that Act which could have been made under a corresponding provision of the Act, continue in force, and any contravention of such orders or regulations constitutes an offence under the Act of 1938(t). The following orders and regulations continue in force in accordance with these provisions :—

Orders and Regulations continued in force by Section 101(3), Food and Drugs Act, 1938.

Title.	S.R. and O.	Reference to text.
		Page
Public Health (Condensed Milk) Regulations, 1923 to 1927	1923, No. 509 1927, No. 1092	{ 213
Public Health (Dried Milk) Regulations, 1923 to 1927	1923, No. 1323 1927, No. 1093	{ 218
Public Health (Meat) Regulations, 1924	1924, No. 1432 1935, No. 187	{ 238
Public Health (Preservatives, etc., in Food) Regulations, 1925 to 1927	1925, No. 775 1926, No. 1557 1927, No. 577	{ 177
Public Health (Prevention of Tuberculosis) Regulations, 1925	1925, No. 737	407
Public Health (Imported Milk) Regulations, 1926	1926, No. 820	341

(ss) Except those modifying existing orders or regulations.

(t) For penalties, see sect. 79, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 303 ; and see *post*, p. 12.

Orders and Regulations continued in force by Section 101(3), Food and Drugs Act, 1938—Continued.

Title.	S.R. and O.	Reference to text.
		Page
Milk and Dairies Regulations, 1926 to 1938	1926, No. 821	} 362
	1938, No. 217	
Public Health (Shellfish) Regulations, 1934	1934, No. 1342	300
Milk (Special Designations) Regulations, 1936 to 1938	1936, No. 356	} 410
	1938, No. 218	
Public Health (Imported Food) Regulations, 1937	1937, No. 329	335

NOTICES, ETC.

The provisions of sections 283 to 285 of the Public Health Act, 1936(*u*), with respect to notices, etc., are incorporated in the Act of 1938(*v*).

Forms of notices, etc.—Section 283 of the Public Health Act, 1936, requires all notices, issued or received by a local authority to be in writing, and the Minister of Health may by regulations prescribe the form of any notice, etc., but he has not yet made regulations dealing with this matter, although certain regulations prescribe forms to be used for the purpose of such regulations.

Authentication of notices, documents, etc.—The various documents issued by a local authority under the Act of 1936, may be signed by the clerk, medical officer of health, or sanitary inspector, or by any officer specially authorised by the authority to sign any particular document(*w*). The sanitary inspector and medical officer of health are, *ex officio*, authorised officers for all purposes of the Act of 1938(*x*), consequently they may sign any document issued under the Act. A facsimile of a signature may be used for signing documents(*y*), and although this will be useful in signing a large number of documents of minor importance, it is wise to use a facsimile signature with discretion. In all cases, a signature stamp should be kept under lock and key by the responsible officer.

(*u*) 29 Halsbury's Statutes 505–506.

(*v*) Sect. 96, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 311.

(*w*) Sect. 284, Public Health Act, 1936 ; 29 Halsbury's Statutes 505.

(*x*) Sect. 100(1), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 316.

(*y*) Sect. 284(2), Public Health Act, 1936 ; 29 Halsbury's Statutes 506.

Service of notices.—The service of notices is a matter of considerable importance, and particular attention should be paid to the provisions of section 285 of the Public Health Act, 1936, *infra*, which is incorporated in the Act of 1938, and which sets out the various ways in which a notice may be validly served :

Section 285, Public Health Act, 1936.—Service of notices, etc.

Any notice, order, consent, demand or other document which is required or authorised by or under this Act to be given to or served on any person may, in any case for which no other provision is made by this Act, be given or served either—

- (a) by delivering it to that person ; or
- (b) in the case of a coroner, or a medical officer of health, by leaving it or sending it in a prepaid letter addressed to him, at either his residence or his office and, in the case of any other officer of a council, by leaving it or sending it in a prepaid letter addressed to him, at his office ; or
- (c) in the case of any other person, by leaving it or sending it in a prepaid letter addressed to him, at his usual or last-known residence ; or
- (d) in the case of an incorporated company or body, by delivering it to their secretary or clerk at their registered or principal office, or by sending it in a prepaid letter addressed to him at that office ; or
- (e) in the case of a document to be given to or served on a person as being the owner of any premises by virtue of the fact that he receives the rackrent thereof as agent for another, or would so receive it if the premises were let at a rackrent, by leaving it, or sending it in a prepaid letter addressed to him, at his place of business ; or
- (f) in the case of a document to be given to or served on the owner or the occupier of any premises, if it is not practicable after reasonable inquiry to ascertain the name and address of the person to or on whom it should be given or served, or if the premises are unoccupied, by addressing it to the person concerned by the description of " owner " or " occupier " of the premises (naming them) to which it relates, and delivering it to some person on the premises, or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises.

Where it is desired to obtain information as to the ownership of premises, a local authority are empowered by section 277 of the Public Health Act, 1936(z), which is incorporated in the Act of 1938(a), to require the occupier of such premises, and any person who either directly or indirectly receives rent in respect of such premises, to state in writing the nature of his own interest in the property and the name and address of any other person known to him to have an interest therein, whether as freeholder, mortgagee, lessee or otherwise. Failure to supply the desired information renders the person con-

(z) 29 Halsbury's Statutes 500.

(a) Sect. 96, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 311.

cerned liable to a penalty not exceeding five pounds. In order to prove service of a notice, proof of posting and delivery is necessary(b), and in every case where legal notices or documents are issued by a local authority, they should be sent by prepaid registered post. Where a notice served on the owner of premises requires the execution of work, section 289 of the Public Health Act, 1936(c), which is incorporated in the Act of 1938, enables him to obtain an order of a court of summary jurisdiction compelling the occupier to permit him to execute the necessary work.

Proof of resolutions, etc.—The provisions of section 286 of the Public Health Act, 1936(d), are incorporated in the Act of 1938, and provide that in any proceedings under the latter Act, a document purporting to be certified by the clerk of a council as a copy of a resolution or order passed or made by that council on a specified date, or of the appointment of, or of any authority given to, an officer of that council on a specified date, shall be evidence that that resolution, order, appointment or authority was duly passed, made or given by the council on that date.

COMPENSATION PAYABLE BY LOCAL
AUTHORITY.

The following provisions of the Act of 1938 authorise the payment of compensation by local authorities—

Section.	Subject matter.	Reference to text.
		Page
10	Seizure of unsound food	227
18	Seizure of food suspected of causing food poisoning	323
37	Ice-cream likely to cause milk-borne disease	401
61	Elimination of private slaughterhouses	270

Regulations made under the Act of 1938 (see *ante*, p. 3), may also contain provisions with respect to the payment of compensation(e).

Any dispute arising as to the fact of damage or loss, or as to the amount of compensation, must be determined by

(b) *Walthamstow U.D.C. v. Henwood*, [1897] 1 Ch. 41 ; 38 Digest 171, 148.
(c) 29 Halsbury's Statutes 509.
(d) 29 Halsbury's Statutes 507.
(e) Sect. 92, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 309 ; and see *ante*, p. 4.

arbitration, provided that, if the compensation claimed does not exceed £50, all questions as to the fact of damage or loss, liability to pay compensation and the amount thereof, may, on the application of either party, be determined by, and any compensation awarded may be recovered before, a court of summary jurisdiction(*f*). In arbitrations under the Act of 1938 the reference is to a single arbitrator to be appointed by agreement between the parties or, in default of agreement, by the Minister of Health(*g*).

LEGAL PROCEEDINGS.

Prosecutions(*h*).—Prosecutions under the Act of 1938 are subject to the provisions of section 80, *infra*.

Section 80, Food and Drugs Act, 1938.—Prosecutions.

- (1) Subject to the provisions of this Act, all offences under this Act and regulations and byelaws made thereunder may be prosecuted under the Summary Jurisdiction Acts :

Provided that—

- (a) where a sample has been procured under this Act, no prosecution in respect of the article sampled shall be commenced after the expiration of twenty-eight days from the time when the sample was procured unless the justice of the peace before whom the information is laid, on being satisfied on oath that having regard to the circumstances of the particular case it was not practicable to lay the information at an earlier date, gives a certificate to that effect, and in no case shall the prosecution be commenced after the expiration of forty-two days from the said time ;
 - (b) the time within which proceedings may be commenced under section eighty-five of this Act in respect of the giving of a false warranty shall be twelve months instead of six months.
- (2) Subject as hereinafter provided, where a sample has been procured under this Act, any proceedings in respect of the article sampled shall be taken before a court having jurisdiction in the place where the sample was procured :

Provided that—

- (a) where a sample procured within one area is for the purposes of this Act deemed to have been procured within another area, proceedings may, at the option of the prosecutor, be taken either before a court having jurisdiction within the area within which the sample was procured, or before a court having jurisdiction within the area within which it is deemed to have been procured ; and
- (b) where the article sampled was sold and actually delivered to the purchaser, proceedings may, if the prosecutor so elects, be taken before a court having jurisdiction at the place of delivery.

(*f*) *Ibid*, sect. 86 ; 31 Halsbury's Statutes 307.

(*g*) Sect. 303, Public Health Act, 1936 ; 29 Halsbury's Statutes 516 ; incorporated in the Act of 1938 by sect. 96.

(*h*) For general note as to legal proceedings, see the author's *Sanitary Administration*, Second Edition, London, Butterworth & Co. Ltd., pp. 70 *et seq.*

- (3) In any proceedings under this Act in respect of an article sampled, the summons shall not be made returnable less than fourteen days from the day on which it is served, and a copy of any certificate of analysis obtained on behalf of the prosecutor, and of any certificate given by a justice under proviso (a) to subsection (1) of this section, shall be served with the summons.
- (4) In any proceedings under this Act, where a sample has been procured in such circumstances that its division into parts is required by this Act, the part of the sample retained by the person who procured it shall be produced at the hearing.

Local authorities are empowered by section 276 of the Local Government Act, 1933(*i*), where they deem it expedient for the promotion or protection of the interests of the inhabitants of their area, to prosecute or defend any legal proceedings. A local authority may authorise a member or officer to institute legal proceedings on their behalf, either generally or in respect of any particular matter(*k*). Such member or officer may institute or defend proceedings before the court, notwithstanding the provisions of the Solicitors' Act, 1932(*l*). No officer, not even the clerk of the council, can institute legal proceedings without being authorised to do so by the local authority, but a general authority may, by resolution, be given empowering the officer to institute proceedings for any offence under the Act of 1938 or byelaws or regulations made thereunder. It has been held that the expression "officer" does not include a police officer(*m*), but a police officer may be an "authorised officer"(*n*) for the purposes of the provisions of the Act of 1938 relating to the taking of samples, subject to the approval of the police authority concerned. In such circumstances a police officer may be authorised to take legal proceedings in respect of samples of food obtained by him as a sampling officer.

The summons served on the defendant must always be accompanied by a copy of the certificate of the public analyst on which the charge is based and copies of other certificates (*e.g.* of samples taken in course of delivery or appeal to cow samples) upon which the prosecutor intends to rely, although it has been held that the requirements of subsection (3) of section 80, *supra*, relate to the certificate of analysis in respect of the sample forming the subject of the prosecution and are not to be construed as referring to certificates of other samples subsequently procured by the sampling officer(*nn*). When a

(*i*) 26 Halsbury's Statutes 452.

(*k*) Sect. 277, Local Government Act, 1933; 26 Halsbury's Statutes 452.

(*l*) 25 Halsbury's Statutes 794.

(*m*) *Kyle v. Barbour* (1888), 58 L.T. 229; 38 Digest 168, 128.

(*n*) See sect. 100, Food and Drugs Act, 1938; 31 Halsbury's Statutes 313; and see *post*, p. 33.

(*nn*) *Sherwood v. Cox*, [1945] K.B. 549; [1945] 2 All E.R. 92.

retailer, wholesaler, or producer serves notice on the sampling officer, in accordance with the procedure laid down in the Third Schedule to the Act of 1938(o), copies of the analyst's certificates in respect of the samples must be served with any summons issued on the retailer, wholesaler or producer (see *post*, p. 69).

It should be observed that legal proceedings in respect of an offence under the Act of 1938, must be commenced within a period of six months(p), unless some other period is specified(q), and it has been held that such proceedings are commenced when the information is laid and not when the summons is actually served(r).

It is important to note that the period of 28 days laid down for the commencement of proceedings in respect of samples obtained under the Act of 1938 cannot be extended unless a justice allows an extension owing to exceptional circumstances rendering it impracticable to lay the information within the period of 28 days, and in any case, the information *must* be laid within a period of 42 days. The time-limit cannot be waived by the appearance of the defendant(s). It has been held that the period of 28 days applies in the case of persons charged with aiding and abetting as well as to those charged as principals(t).

Subsection (1) of section 80, *supra*, extends the period of time for the institution of legal proceedings in respect of the giving of a false warranty under section 85 of the Act of 1938 (see *post*, p. 176), from six to twelve months. In a case where proceedings in respect of a false warranty were instituted against a wholesaler, but the actual purchase forming the basis of the proceedings was made from a retailer, it was held that the limitation of time was 12 months and not 28 days(u). In the case of a warranty covering a number of deliveries, the period runs from the date of the delivery in question(v). In calculating the period of 28 days, it was held that the day on which the sample was obtained is to be excluded(w).

So far as milk is concerned, legal proceedings may be instituted against the seller or consignor of the milk, instead of the retailer (see *post*, p. 69).

(o) 31 Halsbury's Statutes 318.

(p) Prescribed by the Summary Jurisdiction Act, 1848, sect. 11; 11 Halsbury's Statutes 278.

(q) *E.g.* 28 days under subsection (1) of section 80, Food and Drugs Act, 1938.

(r) *Beardsley v. Giddings*, [1904] 1 K.B. 847; 25 Digest 102, 248.

(s) *Dixon v. Wells* (1890), 25 Q.B.D. 249; 25 Digest 105, 283.

(t) *Gould & Co. v. Houghton*, [1921] 1 K.B. 509; 25 Digest 104, 282.

(u) *Herman Jennings & Co., Ltd. v. Slatcher*, [1942] 2 K.B. 115; [1942] 2 All E.R. 1.

(v) *Thomas, Ltd. v. Houghton*, [1911] 2 K.B. 959; 25 Digest 101, 243.

(w) *Frew v. Morris* (1897), 24 R. (Ct. of Sess.) 50; 25 Digest 106, 291, ii.

With regard to the institution of proceedings in counties, it has been held that these may be taken in any petty sessional division of the county and not necessarily in that having jurisdiction in the area where the sample was actually obtained(*x*).

The period of fourteen days, specified in subsection (3) of section 80, *supra*, means 14 clear days(*y*).

The importance of producing the third-portion of the sample (see *post*, p. 64) in court at the time legal proceedings are taken, cannot be over-estimated. Without it, a conviction may not be recorded(*z*). On the other hand, the portion of the sample produced in court need not be in a fit state to be analysed(*a*). Nevertheless, as pointed out elsewhere (see *post*, p. 63), it is most desirable that local authorities should provide their sampling officers with adequate refrigeration accommodation in order to retain samples in a fresh condition for production in court at the time legal proceedings are taken. In the case of proceedings being taken against a previous seller, in accordance with the procedure laid down in section 83(3) of the Act of 1938 (see *infra*), it is still necessary to produce the third-portion of the sample in court when the case is heard, but the sample, once having been divided into three parts and sealed, the part retained by the sampling officer must not be opened for further division so as to enable a previous seller to have a portion of it(*b*). The power of the court to require the third-portion of the sample to be analysed by the Government Chemist, is contained in section 82 of the Act of 1938 (see *post*, p. 64).

Penalties.—A person found guilty of an offence under the Act of 1938 is liable, unless a special penalty for that offence is provided by the Act, in the case of a first offence, to a fine not exceeding £20, and in the case of a subsequent offence, to a fine not exceeding £100 or to imprisonment for a term not exceeding three months, or to both fine and imprisonment(*c*). A person convicted of an offence in respect of the sale or exposure for sale, etc., of unsound food, is liable to a penalty of £50, or to imprisonment for a term up to three months, or to both fine and imprisonment(*d*).

(*x*) *Horan v. Power* (1916), 50 I.L.T. 64.

R. v. Beacontree Justices, [1915] 3 K.B. 388; 25 Digest 105, 284.

(*y*) *McQueen v. Jackson*, [1903] 2 K.B. 163; 25 Digest 106, 296.

(*z*) *Hutchison v. Stevenson* (1902), 4 F. (Ct. of Sess.) 69; 25 Digest, 103, g.

(*a*) *Suckling v. Parker*, [1906] 1 K.B. 527; 25 Digest 103, 257.

Winterbottom v. Allwood, [1915] 2 K.B. 608, 25 Digest 75, 50.

Chalmers v. M'Meeking, [1921] 58 Sc. L.R. 227; 25 Digest 79, s and 103, 257, i.

(*l*) *British Fermentation Products, Ltd. v. Teal*, [1943] K.B. 275; [1943] 1 All E.R. 331.

(*c*) Sect. 79, Food and Drugs Act, 1938; 31 Halsbury's Statutes 303.

(*d*) *Ibid*, sect. 9(4); 31 Halsbury's Statutes, 259.

Defence available to defendant where some other person is responsible for the alleged offence.—In order that the person *actually* responsible for the offence, *e.g.* an employee adding water to milk, or a wholesaler selling prepacked goods, may be brought before the court instead of or at the same time as, the actual vendor, the procedure described in section 83 of the Act of 1938, *infra*, may be followed.

Section 83, Food and Drugs Act, 1938.—*Defence available to defendant where some other person is responsible for the commission of the offence charged.*

- (1) A person against whom proceedings are brought under this Act shall, upon information duly laid by him and on giving to the prosecution not less than three clear days' notice of his intention, be entitled to have any person to whose act or default he alleges that the contravention of the provisions in question was due brought before the court in the proceedings, and, if, after the contravention has been proved, the original defendant proves that the contravention was due to the act or default of that other person, that other person may be convicted of the offence, and, if the original defendant further proves that he has used all due diligence to secure that the provisions in question were complied with, he shall be acquitted of the offence.
- (2) Where a defendant seeks to avail himself of the provisions of the preceding subsection—
 - (a) the prosecution, as well as the person whom the defendant charges with the offence, shall have the right to cross-examine him, if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence ;
 - (b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party thereto.
- (3) Where it appears to the authority concerned that an offence has been committed in respect of which proceedings might be taken under this Act against some person and the authority are reasonably satisfied that the offence of which complaint is made was due to an act or default of some other person and that the first-mentioned person could establish a defence under subsection (1) of this section, they may cause proceedings to be taken against that other person without first causing proceedings to be taken against the first-mentioned person.

In any such proceedings the defendant may be charged with and, on proof that the contravention was due to his act or default, be convicted of, the offence with which the first-mentioned person might have been charged.

It is for the prosecution to decide whether to proceed against the actual seller, notwithstanding that they are aware that some other person is responsible. As a general rule it is desirable to proceed directly against the person actually responsible, but in case of doubt where proceedings are taken against the original vendor, he is adequately safeguarded by the provisions of section 83, *supra*. It has been held that a whole chain of distributors, including the original manu-

facturer of the article in question, may be brought before the court as defendants at one and the same time(e). It has been held(ee) that a summons against some "other person" in pursuance of subsection (3) of section 83, *supra*, should make it clear that the proceedings are taken in conformity with the procedure laid down in the section. It is not necessary to supply each of the vendors with a third-portion of the sample(f), and it is only necessary to commence the proceedings against the first defendant within the prescribed time (see *ante*, p. 11)(g).

It is a defence, in proceedings in respect of milk, to prove that it was conveyed in sealed churns and that the seals were broken at the time of sampling(h).

Appeals.—The procedure with respect to appeals to a court of summary jurisdiction, is laid down in section 87, *infra*.

Section 87, Food and Drugs Act, 1938.—Appeals to courts of summary jurisdiction against decisions of authorities.

- (1) Where any enactment in, or regulation made under, this Act provides for an appeal to a court of summary jurisdiction against a refusal or other decision of an authority, the procedure shall be by way of complaint for an order, and the Summary Jurisdiction Acts shall apply to the proceedings.
- (2) The time within which such an appeal may be brought shall be twenty-one days from the date on which notice of the authority's refusal or other decision was served upon the person desiring to appeal, and for the purposes of this subsection the making of the complaint shall be deemed to be the bringing of the appeal.
- (3) In any case where such an appeal lies, the document notifying to the person concerned the decision of the authority in the matter shall state the right of appeal to a court of summary jurisdiction and the time within which such an appeal may be brought.

It is most important that the right of appeal should be stated on the document notifying the local authority's decision, as required by subsection (3), *supra*, otherwise the proceedings are invalidated.

Where a person is aggrieved by an order, determination or other decision of a court of summary jurisdiction under the Act of 1938, or under any regulations made under that Act, he may appeal to a court of quarter sessions(i). The appellant

(e) *British Fermentation Products, Ltd. v. British Italian Trading Co., Ltd.*, [1942] 2 K.B. 145; [1942] 2 All E.R. 256.

(ee) *Atterton v. Browne*, [1945] K.B. 122.

(f) *British Fermentation Products, Ltd. v. Teal*, [1943] K.B. 275; [1943] 1 All E.R. 331.

(g) *Concentrated Foods, Ltd. v. Champ*, [1944] K.B. 342; [1944] 1 All E.R. 272; *British Doughnut Co. Ltd. v. Dale*, [1944] K.B. 228.

(h) Sect. 71(2), Food and Drugs Act, 1938; 31 Halsbury's Statutes 298; and see *post*, p. 69.

(i) *Ibid*, sect. 88; 31 Halsbury's Statutes 308.

must give notice of his intention to appeal within a period of fourteen days, by serving notice on the justices' clerk and the prosecutor, stating the general grounds of his appeal^(k).

When a defendant avails himself of the right to bring a wholesaler before the court in accordance with section 83 of the Act of 1938 (see *ante*, p. 13), notice of appeal by the wholesaler must be served on the original prosecutor, as the two cases constitute one set of proceedings^(l).

If the court varies or reverses any decision of an authority, it is the duty of that authority to give effect to the order of the court, and, in particular, to grant any necessary licence and to make any necessary entry in any register^(m).

Where an appeal is pending, a right to carry on business is conferred by section 90 of the Act of 1938, *infra*.

Section 90, Food and Drugs Act, 1938.—Right to carry on business in certain cases while appeal is pending.

- (1) Where a decision of an authority under this Act refusing, cancelling, suspending or revoking, registration or a licence, or a decision of a court of summary jurisdiction on appeal against such a decision, makes it unlawful for a person to carry on any business which he, or his immediate predecessor in the business, was lawfully carrying on at the date when the decision of the authority was given, or to use any premises for any purpose for which he, or his immediate predecessor in the business was lawfully using them at the said date, he may carry on that business and use those premises for that purpose until the time for appealing has expired and, if an appeal is lodged, until the appeal is finally disposed of or abandoned, or has failed for want of prosecution.
- (2) The foregoing provisions with respect to the right to continue to carry on a business and to use premises shall apply also where the decision of a court in proceedings in respect of an offence under this Act makes it unlawful for a person to carry on a business which he was lawfully carrying on immediately before the decision was given, or to use any premises for any purpose for which he was then lawfully using them.

TEMPORARY CONTINUANCE OF LICENCE OR REGISTRATION ON DEATH OF PERSON LICENSED OR REGISTERED.

Where a person holding a licence, or who is registered in respect of any premises, under the Act of 1938 or any regulations made thereunder, dies, the licence or registration continues in operation for the benefit of his widow, or any other member of his family until two months after his death, or until

(k) Sect. 1, Summary Jurisdiction (Appeals) Act, 1933; 26 Halsbury's Statutes 546.

(l) *R. v. Derby Recorder, Ex. p. Spalton*, [1944] K.B. 611; [1944] 1 All E.R. 721.

(m) Sect. 89, Food and Drugs Act, 1938; 31 Halsbury's Statute 308.

the expiration of such longer period as the licensing or registering authority may allow, provided the licence or registration had not previously been revoked or cancelled(*n*).

LOCAL INQUIRIES.

Section 318 of the Public Health Act, 1936(*o*), is incorporated in the Act of 1938(*p*), and empowers the Minister of Health to hold a local inquiry in any case where he is authorised to determine any difference, to make any order, to frame any scheme, to give any consent, confirmation, sanction or approval, or otherwise to act under the Act, and in any other case where he deems it advisable that a local inquiry should be held in relation to any matter concerning the public health in any place.

DISPLAY OF PUBLIC NOTICES BY LOCAL AUTHORITY.

Where a local authority are required to display a public notice, it may be—

- (a) affixed to the offices of the local authority or, in the case of a parish council, on or near the principal door of each church or chapel in the parish ; and
- (b) posted in some conspicuous place or places within the area of the local authority ; and
- (c) displayed in such other manner, if any, as appears to the local authority to be desirable for giving publicity to the notice(*q*).

A notice or other document required to be affixed to the offices of a local authority or to a town hall, must be exhibited in some conspicuous place on or near to the outer door of the offices of the authority or the town hall, or, if the authority have no offices, or there is no town hall, in some conspicuous place in the area of the local authority, or in the area to which the notice or document relates(*r*). A penalty is imposed upon any person who destroys, pulls down, injures or tampers with, a public notice(*s*).

(*n*) Sect. 97, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 312.

(*o*) 29 Halsbury's Statutes 523.

(*p*) See sect. 96 ; 31 Halsbury's Statutes 311.

(*q*) Sect. 287, Local Government Act, 1933 ; 26 Halsbury's Statutes 458.

(*r*) *Ibid*, sect. 288 ; 26 Halsbury's Statutes 458.

(*s*) *Ibid*, sect. 289 ; 26 Halsbury's Statutes 458.

CHAPTER 2.

FOOD AND DRUGS AUTHORITIES.

For purposes of local government administration generally, the country is divided into districts as follows :—

Administrative counties ;
County boroughs ;
Non-county boroughs ; } known as
Urban districts ; } county
Rural districts ; } districts(a)
Port health districts ;
In London :—
(i) City of London ;
(ii) County of London ; and
(iii) Metropolitan boroughs.

Each of these authorities has certain powers and duties in relation to food and drugs, under the Act of 1938 and other statutes dealing with the subject.

The Food and Drugs Act, 1938, is in force in London(b), with the exception of Part V(c), relating to markets, slaughter-houses and cold-air stores (see chapter 20, *post*, p. 472).

GOVERNMENT DEPARTMENTS CONCERNED WITH FOOD AND DRUGS.

The Ministry of Health and the Ministry of Agriculture and Fisheries are the Departments chiefly concerned with the administration of the law relating to food and drugs, which is detailed in the present volume.

The Ministry of Health are primarily concerned with the control of the food supply in order to prevent outbreaks of disease and illness, and the maintenance of a proper standard of nutrition. During the war emergency, the Ministry of Food have exercised very detailed control over the food supply of the country and in numerous ways have dealt with matters previously the concern of other Government Departments. Reference will be made to these functions in the appropriate chapters. It is by no means certain that the Ministry of Food will continue as a permanent Department, nor, if it does, what functions it will carry out.

The Ministry of Agriculture are concerned more with matters affecting agriculture and the various branches of the food industry.

(a) Sect. 343, Public Health Act, 1936 ; 29 Halsbury's Statutes 536.

(b) The administrative county—sect. 100, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 313.

(c) *Ibid*, sect. 103(2) ; 31 Halsbury's Statutes 318.

The *Ministry of Health* are responsible for the following matters connected with food and drugs :—

- 1—Matters connected with the composition of food and drugs—see Part 2, *post*, p. 111.
- 2—Matters connected with unsound food—see Part 3, *post*, p. 225.
- 3—Matters connected with milk and dairies—see Part 4, *post*, p. 360.
- 4—Matters connected with food premises—see Part 5, *post*, p. 452.

The *Ministry* are also concerned with local government administration generally, including—

- i—Confirmation of byelaws ;
- ii—Public local inquiries ;
- iii—Defaulting local authorities ;
- iv—Hearing appeals ; and
- v—Approval of appointment of officers.

The *Ministry of Agriculture and Fisheries* are responsible for the following matters connected with food and drugs :—

- 1—Diseases of animals—see chapter 21, *post*, p. 486.
- 2—Fertilisers and feeding stuffs—see chapter 23, *post*, p. 542.
- 3—Grading of agricultural produce—see chapter 24, *post*, p. 624.
- 4—Certain matters connected with the following—
 - i—composition of foods—see Part 2, *post*, p. 111.
 - ii—milk and dairies—see Part 4, *post*, p. 360.
 - iii—marine, freshwater and shell-fish—see chapter 10, *post*, p. 284 ; and
 - iv—merchandise marks—see chapter 13, *post*, p. 343.

The *Home Office* is concerned with pharmacy and poisons, see Chapter 22, *post*, p. 542.

LOCAL AUTHORITIES RESPONSIBLE FOR THE ENFORCEMENT OF THE FOOD AND DRUGS ACT, 1938.

The expressions “ local authority ” and “ food and drugs authority ” are used throughout the Act of 1938 and these terms are defined in section 64 of the Act(*d*).

“ Local authority ” means—

- (a) as respects the City of London, the Common Council and, as respects a metropolitan borough, the council thereof ;
- (b) as respects the Inner Temple and the Middle Temple, the respective overseers thereof ; and
- (c) as respects any other borough and any urban district or rural district, the council of the borough or district ;

Provided that, in the case of a rural district with respect to which there is in force such a direction as is mentioned in subsection (2) of section forty-two of the Local Government Act, 1933, the council by whom the affairs of the district are being temporarily administered shall be deemed to be the local authority.

The direction referred to in section 42 of the Local Government Act, 1933, is one which the Minister of Health may make if a rural district council has less than five members^(e).

“ Food and Drugs Authority ” means—

- (a) as respects the City of London, the Common Council and, as respects a metropolitan borough, the council thereof ;
- (b) as respects a county borough, and also as respects any non-county borough or urban district which has according to the last published census for the time being a population of forty thousand or upwards, the local authority ; and
- (c) as respects any other area, the county council ;

Provided that—

- i—if a county council satisfy the Minister that the area or areas in respect of which they would be the Food and Drugs authority would be rendered inconvenient in size, shape or situation for the efficient performance of their duties as the Food and Drugs authority, the Minister may direct that the county council shall be the Food and Drugs authority as respects the district or districts of any one or more of the local authorities, who, but for such a direction, would be Food and Drugs authorities under this Act, but were not such authorities under the law in force immediately before the commencement thereof ;
- ii—on the application of the local authority of any non-county borough or urban district which has according to the last published census for the time being a population of twenty thousand or upwards but less than forty thousand, the Minister may direct that the local authority shall, in lieu of the county council, be the Food and Drugs authority as respect their district.

It should be noted that in—

- | | | |
|---|---|--|
| 1— <i>London</i> (except the area of the Inner Temple and the Middle Temple) and <i>County Boroughs</i> — | } | “ local authorities ” and “ food and drugs authorities ” are the same body ; |
| 2— <i>Non-county boroughs</i> and <i>Urban districts</i> | } | the two authorities may or may not be the same body ; and |
| 3— <i>Rural districts</i> | } | the two authorities are different bodies. |

A great deal of attention has been directed to the question of the type of authority by whom the functions under the Food and Drugs Acts should be administered. In 1929 the Royal Commission on Local Government, in their Final Report^(f), recommended that such functions should be administered by county and county borough councils only, to the exclusion of county district councils. The matter was further considered by the Local Government and Public Health

^(e) 26 Halsbury's Statutes 326.

^(f) Cmd. 3436, para. 39.

Consolidation Committee in 1937(g), who recommended as follows :—

26—" In our opinion the main factors in determining whether a local authority should be a Food and Drugs authority or not, are :—

- (a) the extent to which the routine work of food inspection and sampling in the area will represent something more than occasional duties for the officers engaged on the work ; and
- (b) the standard which the authority have achieved in their public health arrangements.

The first of these factors is mainly determined by the size of the population of the area and in this connection it is worth recording that the figures set out in paragraph 36 of the Report of the Royal Commission indicate that the number of samples examined in a year is roughly 3 per 1,000 of the population. In judging the second it is relevant to consider whether the authority employ on the one hand a medical officer of health who is engaged exclusively in their employment, or exclusively in the employment of public authorities, or, on the other hand, one who carries on a part-time private practice.

27—" Ultimately we came to the conclusion that a reasonable compromise might be secured by entrusting the functions to county councils, county borough councils and the councils of urban areas (whether boroughs or urban districts) having a population according to the last published census of not less than 40,000, and empowering the Minister by order to confer them on the council of any other urban area with a population of not less than 20,000. In exercising this jurisdiction the Minister would, no doubt, have regard to the considerations to which we have referred.

If our recommendation on this point is accepted, the effect will be to increase slightly the number of Food and Drugs authorities. At present there are, outside London, 57 of these authorities in addition to the 144 county and county borough councils. Out of these 57 the councils of 41 of the smaller areas with a population of less than 40,000 would cease to be Food and Drugs authorities, except in so far as the Minister thought fit to exercise his order-making power. On the other hand, 48 councils of areas with a population of 40,000 or more would become Food and Drugs authorities, with a resulting increase on balance of 7.

Clause 64 of the Bill gives effect to this recommendation. Under Clauses 68 and 65 the existing right of county district councils who are not Food and Drugs authorities to procure samples and take proceedings is preserved in accordance with the recommendation of the Royal Commission, and by Clause 75(5) power is conferred on county councils to contribute towards the cost."

This recommendation was accepted by the Government and incorporated in the Act of 1938, but during the passage of the Bill through Parliament, proviso (i), *supra* (relative to county councils), was added.

Notwithstanding that county councils and local authorities are not responsible for the enforcement of the whole of the provisions of the Act of 1938, a county council or a local authority may institute proceedings under any section of, or regulation made under, the Act(*h*).

A county council may delegate any of its functions to a county district council(*i*).

Section 320 of the Public Health Act, 1936(*k*), enables a county district council, by agreement with the county council, to relinquish in favour of, and transfer to, the county council, any of their functions under the Act, for such period and subject to such conditions as may be agreed between the two councils. A copy of any such agreement and notice of its determination must be sent forthwith to the Minister of Health.

COMBINATION OF LOCAL AUTHORITIES.

Section 272 of the Public Health Act, 1936(*l*), enables two or more local authorities, by agreement, to combine for the purposes of any of their functions under the Act of 1938.

ENFORCEMENT OF PROVISIONS OF FOOD AND DRUGS ACT, 1938.

The duties of food and drugs authorities and local authorities are defined in section 65 of the Act of 1938, *infra*—

Section 65, Food and Drugs Act, 1938.—Duty to enforce provisions of Act.

- (1) It shall be the duty of every Food and Drugs authority within their area to carry into execution and enforce the provisions of—

- (a) sections one to seven of this Act (which relate to the composition of food and drugs) ;
- (b) section twenty-four of this Act (which relates to additions not to be made to milk and liquids not to be sold as milk) ;
- (c) sections twenty-seven to twenty-nine of this Act (which relate to artificial cream) ;
- (d) sections thirty-two to thirty-six of this Act (which relate to margarine, margarine-cheese, butter and milk-blended butter) ; and
- (e) any other section of this Act which they are specifically directed to enforce,

with a view to securing that food and drugs are sold only in a pure and genuine condition.

(*h*) Sect. 65(3), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 293.

(*i*) Sect. 274, Local Government Act, 1933 ; 26 Halsbury's Statutes 451.

(*k*) 29 Halsbury's Statutes 524.

(*l*) Incorporated in the Food and Drugs Act, 1938, by sect. 96 ; and see 29 Halsbury's Statutes 498.

- (2) It shall be the duty of every local authority within their district to carry into execution and enforce the provisions of any section of this Act with respect to which the duty is not expressly, or by necessary implication, imposed on some other authority.
- (3) A county council or local authority may institute proceedings under any section of, or regulation made under, this Act, notwithstanding that they are not the authority charged with the execution and enforcement thereof.

The principal duties of food and drugs authorities are—

- i—procuring samples of food and drugs through their sampling officers ;
- ii—appointment of public analysts (see *post*, p. 38) ;
- iii—registration of certain food factories (see *post*, p. 198) ; and
- iv—transmission of quarterly reports of public analysts to Ministry of Health(*m*).

In the case of regulations made under the Act of 1938, it is expressly stated by section 92(3) (see *ante*, p. 4), that such regulations must specify the authorities for their enforcement, whether county councils, local authorities, food and drugs authorities or port health authorities. The local authorities for the enforcement of the various regulations at present in operation by virtue of the Act of 1938, will be found in the sections of this book dealing with the regulations in question. It should also be noted that notwithstanding that a particular class of authority is not charged with the enforcement of a section of the Act of 1938 *or of any regulation made thereunder*, a county council or a local authority may institute proceedings under such section.

In addition to their powers and duties under the Act of 1938 and regulations made thereunder, food and drugs authorities are empowered to enforce certain provisions of the Merchandise Marks Act, 1926(*n*).

The following Table shows the authorities responsible for the enforcement of the various sections of the Act of 1938—

Authorities for enforcement of provisions of Food and Drugs Act, 1938.

Section.	Subject.	Enforced by			Refer- ence to text.
		County Council.	Local authority.	Food and Drugs authority.	
1	Restrictions on the addition of other substances to any food or drug	—	—	×	Page 112
2	Restrictions on the abstrac- tion from any food of any constituent thereof	—	—	×	115

(*m*) Sect. 74, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 299.

(*n*) See sect. 9 ; 19 Halsbury's Statutes 904 ; and see *post*, p. 358.

**Authorities for enforcement of provisions of Food and Drugs Act, 1938.
(Continued.)**

Section.	Subject.	Enforced by			Refer- ence to text.
		County Council.	Local authority.	Food and Drugs authority.	
3	Prohibition against sale of any food or drug not of the nature, substance or quality demanded	—	—	×	Page 116
4	Defences available in proceedings under section 3	—	—	×	140
5	Provisions as to labels	—	—	×	142
6	Labels and advertisements describing incorrectly food or drugs	—	—	×	143
7	Presumptive evidence as to injurious nature of food	—	—	×	114
8	Power of Minister of Health to make regulations as to the importation, preparation, storage, sale, delivery, etc., of food(o)	—	—	—	159
9	Penalty for sale, etc., of unsound food	—	×	—	232
10	Examination of food and seizure of unsound food	—	×	—	227
11	Provisions as to food offered as prizes, etc.	—	×	—	235
12	Power to examine food in course of transit	—	×	—	231
13	Provisions as to rooms where food intended for sale is prepared or stored, etc.	—	×	—	313
14	Registration of premises used in connection with the manufacture or sale of ice-cream or preserved food, etc.	—	×	—	465
15	Byelaws with respect to the handling, wrapping, etc., of food, and the sale of food in the open air	—	×	—	317
16	Notices to be displayed by persons selling ice-cream, etc., from stalls, carts, baskets, etc.	—	×	—	403
17	Notification of cases of food poisoning	—	×	—	322
18	Provisions as to suspected food	—	×	—	323
19	No part of an animal slaughtered in a knacker's yard to be sold for human consumption	—	×	—	253
20	Milk and Dairies Regulations(o)	—	—	—	362
21	Use of special designations in connection with milk— producers	×	×(p)	—	} 411
	retailers	—	×(q)	—	

(o) To be prescribed by individual regulations.

(p) County borough councils only.

(q) All local authorities, see *ante*, p. 18.

**Authorities for enforcement of provisions of Food and Drugs Act, 1938.
(Continued.)**

Section.	Subject.	Enforced by			Reference to text.
		County Council.	Local authority.	Food and Drugs authority.	
22	Power to refuse, or cancel, registration of dairymen	—	×	—	Page { 369
23	Regulations as to presumptive evidence of adulteration of milk	—	—	×	{ 373
24	Certain additions not to be made to milk, and certain liquids not to be sold as milk	—	—	×	121
25	Prohibition of sale of tuberculous milk, or milk of cows suffering from tuberculosis, etc.	—	—	×	121
26	Establishment by certain councils or milk depots	×	× (p)	—	399
27	Regulation of sale of artificial cream	—	×	—	390
28	Premises where artificial cream is manufactured or sold to be registered	—	—	×	209
29	Application to artificial cream of certain provisions relating to cream	—	—	×	209
30	Regulations as to the composition of bread and the addition of substances to flour(o)	—	—	×	210
31	Prohibition of adulterants in bakehouses and mills	—	—	—	223
32	Limit of water in butter, etc., and provisions as to butter in margarine	—	—	×	224
33	Conditions to be observed in dealings in margarine, margarine - cheese and milk-blended butter	—	—	×	199
34	Registration of factories and wholesale premises	—	—	×	201
35	Register of consignments to be kept in factories, etc.	—	—	×	200
36	Prohibition of adulterants in butter factories	—	—	×	201
37	Provisions as to ice-cream likely to cause milk-borne disease	—	—	×	206
38	Sign to be displayed on shops, etc., where horse-flesh is sold for human consumption	—	×	—	401
39	Provisions of means for cleansing of shell-fish	—	×	—	282
40-43	Provisions as to importation(r)	×	×	—	299
		—	—	—	332

(o), (p) See footnotes on p. 23.

(r) Enforced by Commissioners of Customs and Excise.

**Authorities for enforcement of provisions of Food and Drugs Act, 1938.
(Continued.)**

Section.	Subject.	Enforced by			Refer- ence to text.
		County Council.	Local authority.	Food and Drugs authority.	
44	Establishment, or acquisition of market by local authority(s)	—	×	—	Page 474
45	Power of owner of market to sell it to a local authority	—	×	—	475
46	Market days and hours	—	×	—	476
47	Stallages, tolls and other charges	—	×	—	477
48	Time for payment of stallages, etc.	—	×	—	478
49	Recovery of stallages, etc.	—	×	—	479
50	Sales elsewhere than in market, or in shops, etc., prohibited during market hours	—	×	—	479
51	Provision and verification of weighing machines, scales, etc.	—	×	—	481
52	Provisions as to the weighing of articles and of vehicles with their loads and after discharge	—	×	—	482
53	Information as to number, weight, etc., of animals and articles brought to the market	—	×	—	482
54	Penalty for refusal to weigh	—	×	—	483
55	Frauds in connection with weighing, or with tolls, etc.	—	×	—	483
56	Power of any local authority maintaining a market to make market byelaws	—	×	—	483
57	Licensing of slaughterhouses and knackers' yards	—	×	—	259
58	Byelaws as to slaughterhouses and knackers' yards	—	×	—	269
59	Sign to be displayed on slaughterhouse or knackers' yard	—	×	—	268
60	Power of local authority to provide public slaughterhouses	—	×	—	272
61	Elimination of private slaughterhouses	—	×	—	270
62	Establishment by local authority of cold-air stores and refrigerators	—	×	—	484
63	Saving for Port of London Authority and Mersey Docks and Harbour Board	—	×	—	259
64	"Local authority" and "Food and Drugs authority"	—	—	—	18

(s) *Urban* authority or, with the consent of the Minister of Health, a *rural* authority—known as "market authority."

Authorities for enforcement of provisions of Food and Drugs Act, 1938.
(Continued.)

Section.	Subject.	Enforced by			Refer- ence to text.
		County Council.	Local authority.	Food and Drugs authority.	
65	Duty to enforce provisions of Act	—	—	—	Page 21
66	Public analysts	—	—	×	38
67	Facilities for examination of food and drugs	×	×	—	80
68	Powers of sampling	—	—	—	51
69	Right to have samples analysed	—	—	—	80
70	Division of, and dealings with, samples	—	—	—	55
71	Special provisions as to the sampling of milk and proceedings subsequent thereto	—	—	—	69
72	Power of Ministers of Health and Agriculture to have foods analysed and examined	—	—	—	77
73	Powers of Minister of Agriculture as to inspection of premises where margarine, milk-blended butter, etc., produced or subjected to treatment	—	—	—	198
74	Quarterly reports by analysts	—	—	×	41
75	Expenses	×	×	×	31
76	Provisions as to port health authorities and joint boards	—	—	—	30
77	Power to enter premises	×	×	×	43
78	Penalty for obstructing execution of Act	×	×	×	45
79	Penalties	×	×	×	12
80	Prosecutions	×	×	×	9
81	Evidence of certificates of analysis and presumptions	—	—	×	172
83	Defence available to defendant where some other person is responsible for the commission of the offence charged	×	×	×	13
84	Conditions under which a warrant may be pleaded as defence	—	—	×	175
85	Offences in relation to warrants and certificates of analysis	—	—	×	176
86	Disputes as to compensation	×	×	×	9
94	Protection of officers of local authority or county council acting in the execution of their duty	×	×	—	46
95	Provision for compensation in certain cases to officers of local authorities and county councils	×	×	—	47

DEFAULTING FOOD AND DRUGS AUTHORITY.

The Minister of Health and the Minister of Agriculture and Fisheries are empowered by section 93 of the Act of 1938, *infra*, to authorise one of their officers to execute and enforce any of the provisions of the Act, upon the default of a food and drugs authority.

Section 93, Food and Drugs Act, 1938.—Default of Food and Drugs authority.

- (1) If the Minister or the Minister of Agriculture and Fisheries, after communication with a Food and Drugs authority, is of opinion that the authority have failed in relation to any kind of food to execute or enforce any of the provisions of this Act which it is their duty to execute or enforce, and that their failure affects the general interests of consumers, or the general interests of agriculture in the United Kingdom, as the case may be, the Minister concerned may by order empower an officer of his department to execute and enforce, or procure the execution and enforcement of, those provisions in relation to food of that kind.
- (2) Expenses incurred under any such order by either of the said Ministers or his officer shall be paid in the first instance out of moneys provided by Parliament, but the amount of those expenses as certified by the Minister concerned shall, on demand, be paid to him by the Food and Drugs authority and shall be recoverable by him from them as a debt due to the Crown, and the authority shall have the like power of raising the money required as they have of raising money for defraying expenses incurred directly by them as a Food and Drugs authority.
- (3) Nothing in this section affects any other power exercisable by the Minister or a county council with respect to defaults of local authorities.

It should be noted that this section is restricted to defaulting food and drugs authorities.

DEFAULTING LOCAL AUTHORITY.

Subsection (3) of section 93, *supra*, provides that the powers of the Minister of Health or a county council with respect to defaulting local authorities are not affected. Section 96 of the Act of 1938 incorporates sections 321 to 325 of the Public Health Act, 1936(*t*), which give the Minister and county councils extensive powers with respect to defaulting local authorities.

Section 321 of the *Public Health Act, 1936(u)*, enables a county council to complain to the Minister that the council of any county district have failed to carry out their duties under the Act and thereupon the Minister must hold a local

(*t*) 29 Halsbury's Statutes 524-527.

(*u*) 29 Halsbury's Statutes 524.

inquiry. *Section 322(1)* enables the Minister to hold such an inquiry if—

- i—a complaint is made to him that any council, port health authority, or joint board have failed to discharge their functions under the Act in any case where they ought to have done so ; or
- ii—he is of opinion that an investigation should be made to ascertain whether any council, port health authority, or joint board have failed to do so.

If, after a public inquiry held in accordance with sections 321 or 322(1), *supra*, the Minister is satisfied that a local authority are in default, he may, by order, require such authority to discharge their functions so as to remove the default within such time and in such manner, as may be specified in the order(*v*). If the local authority fail to comply with an order of the Minister, he may, in the case of a county district or joint board whose district lies wholly within one county, make an order transferring to the county council, such of the powers of the local authority as may be specified in the order. In the case of county councils or county boroughs, the Minister may transfer the functions of the defaulting authority to himself(*w*).

Section 323 of the Public Health Act, 1936(x), contains subsidiary provisions with respect to the transfer of functions from a local authority to a county council(*y*).

Section 324 of the Public Health Act, 1936(z), provides that any expenses incurred by the Minister of Health in the execution of functions transferred to him from a defaulting local authority, may be recovered from the authority in default.

Section 325 of the Public Health Act, 1936(a), empowers the Minister to vary or revoke any order made by him transferring the functions of a defaulting local authority, either to the county council or to himself.

Diseases of Animals Acts.—The Minister of Agriculture and Fisheries is empowered to appoint a person to act in default of a local authority who fail to carry out their duties under the Diseases of Animals Acts and Orders and to recover the expenses incurred by such person from the defaulting authority(*b*).

Fertilisers and Feeding Stuffs Act.—The Minister of Agriculture and Fisheries may authorise one of his inspectors to

(*v*) Sect. 322(2), Public Health Act, 1936 ; 29 Halsbury's Statutes 525.

(*w*) *Ibid*, sect. 322(3) ; 29 Halsbury's Statutes 525.

(*x*) 29 Halsbury's Statutes 525.

(*y*) See the author's *Sanitary Administration*, Second Edition, London, Butterworth & Co., Ltd., p. 24.

(*z*) 29 Halsbury's Statutes 526.

(*a*) 29 Halsbury's Statutes 527.

(*b*) Sect. 34, Diseases of Animals Act, 1894 ; 1 Halsbury's Statutes 408 ; and see Chapter 21, *post*, p. 490.

take samples of fertilisers and feeding-stuffs, where the local authority have failed to exercise their powers under the Fertilisers and Feeding Stuffs Act, 1926, and submit them to the agricultural analyst of the defaulting local authority, and any expenses incurred by the Minister may be recovered from the authority in default(c).

APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES.

Section 85 of the Local Government Act, 1933, *infra*, enables a local authority to appoint a committee for the purpose of dealing with any of the functions of the authority, except the power of levying, or issuing a precept for, a rate, or of borrowing money. It should be noted that such a committee may include persons who are not members of the local authority, so long as not less than two-thirds of the members of the committee are members of the authority.

Having appointed a committee under this section, the local authority may delegate to it any of its functions, except those matters referred to above, and where powers have been so delegated, action may be taken on the instructions of the committee without waiting for their decisions to be confirmed by the local authority. This may be of particular importance in the case of some of the provisions of the Act of 1938.

Section 85, Local Government Act, 1933.—Appointment of committees.

- (1) A local authority may appoint a committee for any such general or special purpose as in the opinion of the local authority would be better regulated and managed by means of a committee, and may delegate to a committee so appointed, with or without restrictions or conditions, as they think fit, any functions exercisable by the local authority either with respect to the whole or a part of the area of the local authority, except the power of levying, or issuing a precept for, a rate, or of borrowing money.
- (2) The number of members of a committee appointed under this section, their term of office, and the area, if any, within which the committee is to exercise its authority, shall be fixed by the local authority.
- (3) A committee appointed under this section (other than a committee for regulating and controlling the finance of the local authority or of their area) may include persons who are not members of the local authority :

Provided that at least two-thirds of the members of every committee shall be members of the local authority.

- (4) Every member of a committee appointed under this section who at the time of his appointment was a member of the local authority by whom he was appointed shall, upon ceasing to

(c) Sect. 12(3), Fertilisers and Feeding Stuffs Act, 1926 ; 1 Halsbury's Statutes 148 ; and see Chapter 23, *post*, p. 573.

be a member of the authority, also cease to be a member of the Committee ;

Provided that for the purposes of this section a member of a local authority shall not be deemed to have ceased by reason of retirement to be a member of the authority, if he has been re-elected a member thereof not later than the day of his retirement.

- (5) Nothing in this section shall authorise the appointment of a committee for any purpose for which the local authority are authorised or required to appoint a committee by any other enactment (including any enactment in this Act) for the time being in force.

Where a committee has been appointed, either by a county council or a local authority, for any of the purposes of the Act of 1938, section 273 of the Public Health Act, 1936, *infra*(d), enables the committee to appoint a sub-committee, to which any of the functions of the committee may be delegated.

Section 273, Public Health Act, 1936.—Provisions as to sub-committees.

A committee appointed by a county council or local authority for any of the purposes of this Act may, subject to any directions of the council or authority, appoint such and so many sub-committees as the committee think fit, and, subject, as aforesaid, may delegate, with or without restrictions or conditions, any of their functions to a sub-committee so appointed :

Provided that a majority of the members of any such sub-committee shall be members of the county council or, as the case may be, of the local authority.

It should be noted that the powers of a local authority must be properly delegated by resolution of the authority to a committee, and, if desired, from a committee to a sub-committee. In any proceedings taken on the authority of a committee or a sub-committee by virtue of powers delegated to them, it will be necessary to satisfy the court that the powers under which the proceedings are instituted have been properly delegated to the committee or sub-committee.

PORT HEALTH AUTHORITIES AND JOINT BOARDS.

Section 76 of the Act of 1938, *infra*, deals with the functions of port health authorities and joint boards.

Section 76, Food and Drugs Act, 1938.—Provisions as to port health authorities and joint boards.

- (1) Orders made by the Minister under section three, section six or section eight, as the case may be, of the Public Health Act, 1936, may—

- (a) assign to a port health authority any of the functions, rights and liabilities of a local authority or Food and Drugs authority under this Act ;

(d) Incorporated in the Food and Drugs Act, 1938, by sect. 96 ; 31 Halsbury's Statutes 311.

(b) constitute a united district for the purposes of any functions under this Act which are functions of a local authority, whether as a Food and Drugs authority or otherwise; or

(c) empower councils of counties and county boroughs to discharge through a joint board any of their functions, in whatever capacity, under this Act,

and amending orders may be made by the Minister accordingly under section nine of the said Act.

For the purposes of section three hundred and eleven of the said Act, as incorporated in this Act, orders made under that Act by virtue of this subsection shall be deemed to be made under this Act.

(2) The functions, rights and liabilities which the Minister may by an order under subsection (1) of section six of the Public Health (London) Act, 1936, vest in or impose on the port health authority of the port of London shall include any functions, rights and liabilities of a local authority or Food and Drugs authority under this Act, and the provisions and byelaws which any such order may extend as mentioned in subsection (3) of the said section shall include any of the provisions of this Act which it is the function of a local authority or Food and Drugs authority to carry into effect and any byelaws made under any of those provisions, and any order previously made under the said section six may be amended accordingly.

For the purposes of this subsection, the making of byelaws under section fifteen of this Act, shall, notwithstanding anything in the proviso to subsection (1) of that section, be deemed to be a function of a local authority.

Sections 3, 6 and 8 of the Public Health Act, 1936^(e), relate to the contents of orders constituting port health districts; the power of the Minister of Health to constitute a united district of the districts, or parts thereof, of two or more local authorities; and the power of the Minister to constitute a joint board through which the councils of counties or county boroughs may discharge their functions^(f).

EXPENSES OF LOCAL AUTHORITIES IN EXECUTION OF FOOD AND DRUGS ACTS.

Section 75 of the Act of 1938, *infra*, deals with the expenses incurred by the various classes of local authority.

Section 75, Food and Drugs Act, 1938.—Expenses.

(1) Expenses incurred under this Act by the Common Council of the City of London, or by the council of a metropolitan borough, shall be defrayed out of the general rate.

(2) Expenses incurred under this Act by the London County Council shall be defrayed as expenses for general county purposes.

^(e) 29 Halsbury's Statutes 324, 326, 327.

^(f) See the author's "*Sanitary Administration*," Second Edition, London, Butterworth & Co., Ltd., pp. 30 *et seq.*

- (3) Expenses incurred by a county council as a Food and Drugs authority shall, if the council are not the Food and Drugs authority for the whole county, be defrayed as expenses for special county purposes charged on those county districts the councils of which are not Food and Drugs authorities.
- (4) Expenses incurred under this Act by a sampling officer in procuring samples and causing samples to be analysed shall be defrayed by the authority whose officer he is :

Provided that expenses incurred by an officer in complying with a notice given to him under subsection (5) of section sixty-eight of this Act shall be borne by the authority whose officer gave the notice, and any dispute as to the amount of any such expenses shall be referred to and determined by the Minister.

- (5) A county council may, as part of their expenses as a Food and Drugs authority, make a contribution towards any expenses incurred by the council of a county district within the county, not being a Food and Drugs authority, in connection with the procuring and analysis or examination of samples and the institution of proceedings under this Act.

CHAPTER 3.

FOOD AND DRUGS OFFICERS.

In order that local authorities may carry out their duties under the Food and Drugs Act, 1938, and allied statutes dealing with food and drugs, they are empowered to appoint officers for the purpose. The expression "officer" under the Act of 1938 includes a servant(a).

The officers mainly concerned with food and drugs administration are the sanitary inspector and medical officer of health. In some areas the veterinary inspector may be appointed to carry out work in connection with the inspection of meat and foods (see *post*, p. 237). Food and drugs authorities (see *ante*, p. 19) are also required to appoint a public analyst to carry out the chemical analysis of samples of food and drugs. Some local authorities and county councils appoint as sampling officers (see *post*, p. 51) police officers, inspectors of weights and measures, and officers of the public control department. Local authorities owning markets are required to appoint officers to attend to the weighing and measuring of articles sold in the market(b).

AUTHORISED OFFICERS UNDER THE ACT OF 1938.

Section 100(1) of the Act of 1938 defines an "authorised officer" for the purposes of the Act as follows:—

"*Authorised officer*" means, as respects any council, an officer of the council authorised by them in writing, either generally or specially to act in matters of any specified kind or in any specified matter and, for the purposes of the provisions of this Act relating to the taking of samples, includes a police constable so authorised with the approval of the police authority concerned:

Provided that—

- (a) the medical officer of health and sanitary inspector of a council shall by virtue of their appointments be deemed to be authorised officers for all the purposes of this Act;
- (b) any member of the Royal College of Veterinary Surgeons employed by the council for the purpose of the inspection of food shall be deemed to be an authorised officer for the purpose of the examination and seizure of meat under the provisions of this Act relating to unsound food;
- (c) no officer of a council other than the medical officer of health, a sanitary inspector or a member of the Royal College of Veterinary Surgeons employed as aforesaid shall be authorised to act in relation to the examination and seizure of meat.

(a) Sect. 100, Food and Drugs Act, 1938; 31 Halsbury's Statutes 313.

(b) *Ibid.*, sect. 51(1); 31 Halsbury's Statutes 285; and see *post*, p. 481.

The sanitary inspector is the officer mainly concerned with the administration of the provisions of the Act of 1938. It should be noted, however, that a properly qualified veterinary surgeon, who has been appointed by a local authority for the purpose of the inspection of food, is, *ex officio*, an authorised officer for the purpose of the examination and seizure of *meat* (see *post*, p. 237). If, however, a veterinary surgeon deals with foods other than meat, he must be specially authorised to do so by the local authority concerned. It should also be observed that the examination and seizure of meat can only be carried out by a sanitary inspector, medical officer of health or veterinary surgeon.

SANITARY INSPECTORS.

Appointment.—Every local authority (see *ante*, p. 18) *must* appoint a fit person to be sanitary inspector(c). The Minister of Health is empowered by section 108 of the Local Government Act, 1933(d), to make regulations prescribing the mode of appointment, and terms as to salary and tenure of office of sanitary inspectors, and their qualifications and duties. In accordance with these powers, the Minister has made the Sanitary Officers (Outside London) Regulations, 1935(e). As to the provisions of the Regulations generally, see the author's "Sanitary Administration"(f).

Qualifications.—The qualifications of sanitary inspectors are prescribed by Article 20 of the Regulations of 1935, *supra*, but in addition to the statutory qualification specified therein, it is the almost universal practice nowadays for local authorities to require their sanitary inspectors to possess the special certificate of the Royal Sanitary Institute for "Inspectors of Meat and Other Foods"(g). The syllabus of this examination is as follows:—

Royal Sanitary Institute, Certificate for Inspectors of Meat and Other Foods—Syllabus of Subjects.

A knowledge of the statutes, byelaws and regulations, also reports and circulars of the Ministry of Health affecting the inspection, storage and sale of meat, fish, milk and other articles of food, including their preparation and adulteration.

Elementary animal physiology. The name, situation, appearance and methods of identification of the organs of the body in animals used for human consumption. The joints or parts into

(c) Sects. 106 and 107, Local Government Act, 1933; 26 Halsbury's Statutes 361, 362.

(d) 26 Halsbury's Statutes 363.

(e) S.R. and O., 1935, No. 1110.

(f) Second Edition, 1944, London, Butterworth & Co., Ltd., pp. 42 *et seq.*

(g) Full particulars of which may be obtained from the Secretary of the Institute, 90 Buckingham Palace Road, London, S.W.1.

which the carcasses of animals are usually divided for food. Position of the lymphatic glands in the carcasses of food animals and the methods of exposing and examining these. Elements of nutrition.

Signs of health and disease in animals destined for food, in the flesh and organs of such animals after slaughter.

Practical methods of stalling, preparing animals for slaughter and humane slaughtering of animals. Transportation of animals and carcasses.

Post-mortem appearances in healthy and diseased carcasses or joints; decomposition and other bacterial infection of food. Causes of food poisoning.

Salt and fresh-water fish, including shell-fish and crustacea. Their identification, seasons and the chief sources of supply. Recognition of their fitness or unfitness for human consumption and a knowledge of the methods of inspection and examination. Taking of samples of shell-fish.

Milk and milk products. The appearance and characteristics and the conditions which render it unfit for human consumption. Hygiene of cowsheds and dairies, conditions essential for the production, storage and distribution of clean milk. Milk and milk infection; milk sampling; methods of inspection; grading of milk; pasteurisation. Cream: natural and artificial. Ice cream: manufacture, storage and sale. Cheese, butter and margarine. Dried and other treated milks.

The appearance and characteristics of fresh, frozen, chilled and cured meat, poultry, fruit, vegetables and other foods, including canned, cured and bottled food. The conditions rendering them unfit for human consumption.

The various methods of packing, storing, canning, preserving and curing food; their effect on the food. The preparation of animal products in sausages, tripe and lard. The handling, carriage and distribution of foods.

Preservatives and colouring matter in food. Kinds of food in which preservatives may be used and kind of preservatives which may be added.

Practical methods and procedure with regard to the inspection of food. Sampling under Food and Drugs Act. Interpretation of analysts' and bacteriologists' reports.

The hygiene of slaughterhouses, lairs, and all places where animals destined for food are kept.

The principles of construction and the hygiene of shops, stalls, markets, factories and other places where food is stored, prepared or exposed for sale.

The Sanitary Inspectors Association have now established a comprehensive Diploma Examination^(h), consisting of three sections, section 2 dealing with Food Inspection. The syllabus of this section of the Diploma Examination is as follows:—

Sanitary Inspectors Association—Diploma in Sanitary Science and Administration—Section II—Food Inspection—Syllabus of Subjects.

Part 1.—Inspection of Meat and Meat Products.

Comparative anatomy and physiology.

Bacteriology and parasitology in relation to meat and meat products.

(h) Full particulars of which may be obtained from the Secretary of the Association, 19 Grosvenor Place, London, S.W.1.

Signs of health and disease in live animals.

Practical methods of stalling and preparing animals for slaughter. The humane slaughter of animals and the dressing of various carcasses.

The hygiene of slaughterhouses, lairs and all places where animals destined for food are kept.

The joints or parts into which the carcasses of food animals are usually divided for food.

The post-mortem appearances of healthy carcasses, organs and joints.

The recognition and signs of diseased conditions in carcasses and organs of food animals. Judgment as to fitness for human consumption. The location of lymphatic glands in the carcasses and organs of food animals and the methods of exposing and examination.

Other post-mortem changes in meat.

The appearance and characteristics of imported meat and the conditions which render it unfit for food.

Horseflesh. Recognition and diseased conditions associated with horseflesh.

Canned meat ; meat products.

Part 2.—Milk and Milk Products.

Chemistry and bacteriology of milk and milk products.

Diseased conditions associated with milk. Sources of infection and preventive measures. Conditions governing the production of clean milk. Special designations of milk.

Pasteurisation and other processing of milk. The supervision and control of milk pasteurising plants.

Dried and other treated milks. Cream, natural and artificial. Cheese, butter and margarine.

Manufacture, storage and sale of ice-cream.

Part 3.—Inspection of Foods other than Meat and Milk.

Salt and fresh-water fish, including shell-fish and crustacea ; their identification, seasons and chief sources of supply ; methods of purification of shell-fish.

Poultry, rabbits and game. Characteristics, identification and close seasons. Diseased and other conditions rendering them unfit for food.

Various methods of preservation of foods, including canning and bottling. Their effect on food. Inspection of canned foods. Appearance and characteristics of the various kinds of preserved foods. Conditions rendering them unfit for consumption.

Preservatives and colouring matters used in foods.

Adulteration of food.

Methods of Sampling under the Food and Drugs Act and the Milk (Special Designations) Orders.

Interpretation and results of analysts' and bacteriologists' reports.

Construction and hygiene of shops, stalls, factories, dairies, cowsheds and other places where food is stored, prepared or exposed for sale.

Refrigeration and cold stores.

Fish-frying, tripe-boiling, gut-scraping and similar food processes.

The law relating to food and food premises, including Acts and Orders dealing with contagious diseases of animals.

Duties.—The duties of sanitary inspectors are laid down in Article 27 of the Regulations of 1935, and these include, *inter alia*, the following :—

**Article 27, Sanitary Officers (Outside London) Regulations, 1935—
Duties of sanitary inspectors.**

The sanitary inspector as regards the district of which he is appointed shall, except as provided by Article 28 of these Regulations—

-
- (5) from time to time and forthwith upon complaint, visit and inspect the shops and places kept or used for the preparation or sale of any article of food to which the provisions of the statutes and regulations in that behalf apply, and examine any article of food therein, and take such proceedings as may be necessary :
provided that in any case of doubt arising under this paragraph, he shall report the matter to the medical officer of health, with the view of obtaining his advice thereon ;
 - (6) if so directed by the local authority, carry out the duties of a sampling officer under the Food and Drugs Act, 1938 ;
 - (7) if so directed by the local authority, inspect premises used as dairies for the purposes of the Milk and Dairies (Consolidation) Act, 1915, or the Milk and Dairies (Amendment) Act, 1922(*i*), or any Act amending those Acts, and any Orders or Regulations made thereunder ;
-

VETERINARY INSPECTORS.

Local authorities are not now required to appoint veterinary inspectors, although they may do so if they so desire(*k*). Prior to 1st April, 1938(*l*), every local authority (see *post*, p. 488) responsible for the administration of the Diseases of Animals Acts(*m*) was required to appoint at least one veterinary inspector(*n*), but from that date the functions of veterinary inspectors under those Acts were transferred to the Ministry of Agriculture and Fisheries, who are required to appoint an adequate number of veterinary inspectors for the purpose(*o*). The Minister of Agriculture is required, however, to make arrangements for placing the services of veterinary inspectors at the disposal of local authorities, subject to the approval of the Treasury, for enabling such authorities to discharge their functions in relation to public health(*p*).

(*i*) These Acts have now been repealed and re-enacted in the Food and Drugs Act, 1938, see Part 4, *post*, p. 360.

(*k*) See ss. 106 and 107, Local Government Act, 1933 ; 26 Halsbury's Statutes 361, 362.

(*l*) Date of operation of Part IV (Provisions as to Diseases of Animals) of the Agriculture Act, 1937 ; see S.R. and O., 1938, No. 506.

(*m*) As to which generally, see chapter 21, *post*, p. 486.

(*n*) Sect. 35(2), Diseases of Animals Act, 1894 ; 1 Halsbury's Statutes 408.

(*o*) Sect. 19(1), Agriculture Act, 1937 ; 30 Halsbury's Statutes 61.

(*p*) *Ibid*, sect. 19(3) ; 30 Halsbury's Statutes 61.

SAMPLING OFFICERS.

Sampling officers are required for the purpose of obtaining samples of food and drugs for submission to the public analyst for analysis(*q*). An authorised officer (see *ante*, p. 33) of a food and drugs authority or of a local authority not being a food and drugs authority, may exercise such powers of procuring samples of foods and drugs for analysis, or for bacteriological or other examination, as are conferred upon him by the Act of 1938(*r*).

It should be noted that whereas the sanitary inspector and medical officer of health may act as "sampling officers" by virtue of their appointments, other officers, *e.g.* police officer, inspector of weights and measures, public control officers, etc., must be specially authorised for the purpose in accordance with the procedure previously referred to (see *ante*, p. 33).

As to sampling generally, see Chapter 4, *post*, p. 50.

PUBLIC ANALYSTS.

Appointment.—In order that samples of food and drugs may be submitted for chemical analysis, food and drugs authorities *must* appoint a public analyst(s), and a county council or local authority *may* do so(*t*).

Section 66 of the Act of 1938, *infra*, details the special provisions relative to public analysts:—

Section 66, Food and Drugs Act, 1938.—Public Analysts.

- (1) Every Food and Drugs authority shall appoint in accordance with the provisions of this section one or more persons (in this Act referred to as "public analysts") to be analysts of food and drugs within their area.
- (2) No person shall be appointed a public analyst unless he possesses either the prescribed qualifications or such other qualifications as the Minister may approve, and no person shall be appointed public analyst for any area who is engaged directly or indirectly in any trade or business connected with the sale of food or drugs in that area.
- (3) The appointment of a public analyst and the terms of his appointment and the removal of a public analyst shall require the approval of the Minister.
- (4) A Food and Drugs authority shall pay to a public analyst such remuneration as may be agreed, and such remuneration may be expressed to be payable either in addition to any fees received by him under this Part of this Act, or on condition that any fees so received by him are paid over by him to the authority.
- (5) Regulations prescribing qualifications for the purposes of subsection (2) of this section shall be laid before Parliament as soon as may be after they are made.

(*q*) As to the sampling of food and drugs, see Chapter 4, *post*, p. 50.

(*r*) Sect. 68; 31 Halsbury's Statutes 294; and see *post*, p. 51.

(*s*) Sect. 66(1), Food and Drugs Act, 1938; 31 Halsbury's Statutes 293.

(*t*) *Ibid*, sect. 67; 31 Halsbury's Statutes 294.

- (6) A Food and Drugs authority who appoint only one public analyst may appoint also a deputy to act during any vacancy in the office of public analyst, or during the absence or incapacity of the holder of the office.

The foregoing provisions of this section with respect to the qualifications, appointment, removal and remuneration of a public analyst shall apply also in relation to a deputy public analyst, and any reference in the subsequent sections of this Act to a public analyst shall be construed as including a reference to a deputy public analyst appointed under this section.

Deputy public analyst.—It should be noted that by subsection (6) of section 66, *supra*, a food and drugs authority may appoint a person to act as deputy to the public analyst, and the provisions of the Act relative to public analysts apply equally in the case of deputy public analysts.

Qualifications.—In accordance with the provisions of subsection (2) of section 66, *supra*, the Minister of Health has, by Regulations(*u*), laid down that a person shall not be appointed as a public analyst unless either—

(a) he already holds an appointment as public analyst ; or
(b) he is the holder of the Diploma of Fellowship or Associateship of the Royal Institute of Chemistry of Great Britain and Ireland and is also the holder of a certificate granted by that Institute after an examination conducted by them in the chemistry (including microscopy) of food, drugs and water. The Minister of Health has intimated to food and drugs authorities that he will, in the case of persons who do not possess one of the prescribed qualifications, require satisfactory evidence that a candidate for the office of public analyst has attained a standard in analytical chemistry, therapeutics and microscopy equivalent to that required for the qualifications set out in the Regulations. A personal testimonial is of no value as evidence of competence, unless it is given by a person who is himself a recognised expert of high standing in the subjects in question and testifies to his personal knowledge of the proficiency of the candidate in these subjects(*v*). Where a registered medical practitioner is appointed as a public analyst, his medical diploma is ordinarily accepted as sufficient evidence of competence in therapeutics and microscopy but he is required to furnish evidence of competence in analytical chemistry(*w*).

Duties.—The public analyst is required to analyse, as soon as possible, any sample sent to him in pursuance of the Act of 1938, and give to the person by whom such sample was submitted a certificate in the prescribed form (see

(*u*) Public Analysts Regulations, 1939 ; S.R. and O., 1939, No. 840, Art. 3.

(*v*) Circular 1833, Ministry of Health, 11th August, 1939.

(*w*) Memo. 36/Foods, Ministry of Health, January, 1929, para. 13.

infra) specifying the result of the analysis. In the case of a sample submitted by a person not being an officer of a food and drugs authority, the analyst may demand in advance such fee, not exceeding one guinea, as may be fixed by the authority(*x*). In giving his certificate, the analyst must have regard to the provisions of any regulations made under section 23 of the Act of 1938 (see *post*, p. 121). It has been held that if the public analyst does not personally carry out the analysis, the work of his assistant must be supervised(*y*). A public analyst may also be required to analyse samples of food or drugs obtained by an officer of the Ministry of Health or Ministry of Agriculture and Fisheries, in accordance with the provisions of section 72 of the Act of 1938 (see *post*, p. 77).

Certificate of Analysis.—The form of certificate to be used by the public analyst has been prescribed by Regulations(*z*), as follows:—

FOOD AND DRUGS ACT, 1938.

Form of Certificate of Public Analyst prescribed by the Minister of Health under Section 69(3) of the Food and Drugs Act, 1938.

To¹.....
I, the undersigned, public analyst for the.....
do hereby certify that I received on the.....
day of....., 19...., from².....
(by registered post),³ a sample submitted as a sample of
....., for analysis which was marked⁴
..... and weighed (or measured)⁵.....
.....
I further certify that I have analysed it, and as a result of my
analysis I am of opinion that :—
it is a sample of.....
and/or
the constituents of the sample included the following sub-
stances in proportions as under :—
.....
.....

Observations⁶

.....
.....
As witness my hand this.....day of.....
19...., at.....
A. B.
.....

Notes.

¹—Here insert the name of the person submitting the sample for analysis.
²—Here insert the name of the person delivering or sending the sample.

(*x*) Sect. 69(3), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 296.
(*y*) *Bakewell v. Davis*, [1894] 1 Q.B. 296.
(*z*) Public Analysts Regulations, 1939 ; S.R. and O., 1939, No. 840, Art. 4 and Schedule.

- ³—Delete if inapplicable.
- ⁴—Insert particulars of marking, *e.g.* date, number, etc.
- ⁵—This may be left unanswered if the sample cannot be conveniently weighed or measured, or the weight or measurement is not material to the result of the analysis.
- ⁶—Here the analyst may insert at his discretion his opinion whether the analysis indicates any addition, abstraction or deficiency of any kind and whether the addition, abstraction or deficiency (if any) was for the purpose of rendering the article portable or palatable, or of preserving it, or of improving the appearance, or was unavoidable. He may also state whether the addition, abstraction or deficiency is in excess of what is ordinary, or otherwise, and whether it is or is not, injurious to health, and add any other observations he may wish to make. Where a sample of milk is found to be deficient both in milk fat and in other milk solids the analyst should indicate how much, if any, of the milk-fat deficiency he considers to be due to abstraction, allowance being made for the effect of added water. In the case of a certificate regarding milk, or any other article liable to decomposition, the analyst should specially report whether in his opinion any change had taken place in the constitution of the sample that would interfere with the analysis.

It has been held that the certificate of the Government Chemist (see *post*, p. 42) need not be in the prescribed form(a). It has also been held that the certificate need not state, in respect of samples examined in accordance with section 1 of the Act of 1938 (see *post*, p. 112), that the food is injurious to health(b). In any proceedings under the Act of 1938 the production by one of the parties of a document purporting to be a certificate of a public analyst in the prescribed form, or of a document supplied to him by the other party as being a copy of such a certificate, is sufficient evidence of the facts stated therein, unless, in the first-mentioned case, the other party requires the analyst to be called as a witness(c). Similarly, the certificate of a public analyst must be accepted as evidence of the facts stated therein, in proceedings taken under the provisions of the Pharmacy and Poisons Act, 1933, but either party is entitled to call the public analyst as a witness(d).

Quarterly reports.—Every public analyst is required to submit a quarterly report to his authority, as soon as possible after the last day of March, June, September and December in every year, showing the number of articles which have been analysed by him under the Act of 1938 and the result of each analysis. Every food and drugs authority must transmit a copy of each quarterly report received from the public analyst to the Minister of Health(e).

(a) *Foot v. Findlay*, [1909] 1 K.B. 1 ; 25 Digest 115, 385.

(b) *Hull v. Horsnell* (1904), 68 J.P. 591 ; 25 Digest 79, 84.

(c) Sect. 81(1), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 304.

(d) Sect. 24(5), Pharmacy and Poisons Act, 1933 ; 26 Halsbury's Statutes 580 ; and see chapter 22, *post*, p. 546.

(e) Sect. 74, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 299.

AGRICULTURAL ANALYST.

Every county and county borough council *must* appoint an agricultural analyst for the purposes of the Fertilisers and Feeding Stuffs Act, 1926(*f*), who must have a competent knowledge of chemistry and chemical analysis and microscopy as applied to fertilisers and feeding-stuffs. The public analyst, if properly qualified as an agricultural analyst, may act as such, but need not do so(*g*).

A deputy agricultural analyst may be appointed(*h*), and two or more authorities may combine to appoint an agricultural analyst(*i*). All appointments of agricultural analysts are subject to the approval of the Minister of Agriculture and Fisheries(*k*), who is authorised to prescribe by regulations(*l*) the qualifications of agricultural analysts(*m*).

GOVERNMENT CHEMIST.

A court before which any proceedings are taken under the Act of 1938 may, if it thinks fit, and upon the request of either party *must*, submit the portion of any sample produced before them (see *post*, p. 64) to the Government Chemist, who must analyse it and transmit his certificate to the court(*n*). The address of the Government Chemist is Clement's Inn Passage, Strand, London, W.C.2. Justices' clerks are responsible for sending the portions of samples to the Government Chemist, and they should be sent by registered post, with a covering letter stating the nature but not the extent of the adulteration. A fee of two guineas should also be sent.

POWERS OF OFFICERS OF GOVERNMENT DEPARTMENTS.

An inspector of the *Ministry of Health* may—

- (a) take samples of milk at any dairy, or at any time while it is in transit, or at the place of delivery to the purchaser, consignee or consumer(*o*) ; and

(*f*) Sect. 11(1) ; 1 Halsbury's Statutes 147.

(*g*) As to Fertilisers and Feeding Stuffs generally, see Chapter 23, *post*, p. 542.

(*h*) Sect. 11(2), Fertilisers and Feeding Stuffs Act, 1926 ; 1 Halsbury's Statutes 147.

(*i*) *Ibid*, sect. 11(5) ; 1 Halsbury's Statutes 147.

(*k*) *Ibid*, sect. 11(3) ; 1 Halsbury's Statutes 147.

(*l*) *Ibid*, sect. 23(1) ; 1 Halsbury's Statutes 152.

(*m*) See Fertilisers and Feeding Stuffs Regulations, 1932 ; S.R. and O., 1932, No. 658.

(*n*) Sect. 82, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 305 ; and see *post*, p. 64.

(*o*) *Ibid*, sect. 68(4) ; 31 Halsbury's Statutes 294 ; and see *post*, p. 52.

- (b) if directed by the Minister, procure samples of any specified food and thereupon the officer has all the powers of a sampling officer(*p*).

An officer of the *Ministry of Agriculture and Fisheries* may—

- (a) if directed by the Minister, procure samples of any specified food and thereupon the officer has all the powers of a sampling officer(*p*) ; and
- (b) take samples of any butter, margarine, margarine-cheese or milk-blended butter, or of any substances capable of being used in the manufacture, treatment or adulteration of any of those articles(*q*).

An officer of the *Customs and Excise* may take samples of consignments of imported food as may be necessary for the enforcement of the provisions of Part IV of the Act of 1938(*r*).

POWER OF ENTRY.

In order that authorised officers under the Act of 1938 may be able to enter premises, the necessary powers are contained in section 77, *infra*.

Section 77, Food and Drugs Act, 1938.—Power to enter premises.

- (1) Subject to the provisions of this section, any authorised officer of a council shall, on producing, if so required, some duly authenticated document showing his authority, have a right to enter any premises at all reasonable hours—
 - (a) for the purpose of ascertaining whether there is or has been on, or in connection with, the premises any contravention of the provisions of this Act or of any regulations or byelaws made thereunder, being provisions which the council are required or empowered to enforce ; and
 - (b) generally for the purpose of the performance by the council of their functions under this Act or any such regulations or byelaws :

Provided that admission to any premises used only as a private dwelling-house shall not be demanded as of right unless twenty-four hours' notice of the intended entry has been given to the occupier.

- (2) If it is shown to the satisfaction of a justice of the peace on sworn information in writing—
 - (a) that admission to any premises has been refused, or that refusal is apprehended, or that the premises are unoccupied or the occupier is temporarily absent, or that the case is one of urgency, or that an application for admission would defeat the object of the entry ; and
 - (b) that there is reasonable ground for entry into the premises for any such purpose as aforesaid,

the justice may by warrant under his hand authorise the

(*p*) *Ibid*, sect. 72(1) ; 31 Halsbury's Statutes 298 ; and see *post*, p. 77
 (*q*) *Ibid*, sect. 73(1) ; 31 Halsbury's Statutes 298 ; and see *post*, p. 198.
 (*r*) *Ibid*, sect. 41(1) ; 31 Halsbury's Statutes 280 ; and see *post*, p. 334.

council by any authorised officer to enter the premises, if need be by force, and, where the justice is satisfied that there is reasonable ground for supposing that the premises in question are unregistered premises used for the manufacture of artificial cream contrary to the provisions of this Act, the warrant may also authorise a search for and the seizure of any machine suitable for use in the manufacture of artificial cream :

Provided that such a warrant shall not be issued unless the justice is satisfied either that notice of the intention to apply for a warrant has been given to the occupier, or that the premises are unoccupied or that the occupier is temporarily absent, or that the case is one of urgency, or that the giving of such notice would defeat the object of the entry.

- (3) An authorised officer entering any premises by virtue of this section, or of a warrant issued thereunder, may take with him such other persons as may be necessary, and on leaving any unoccupied premises which he has entered by virtue of such a warrant shall leave them as effectively secured against trespassers as he found them.
- (4) Every warrant granted under this section shall continue in force for a period of one month.
- (5) If any person who, in compliance with the provisions of this section, or of a warrant issued thereunder, is admitted into a factory or workplace discloses to any person any information obtained by him in the factory or workplace with regard to any manufacturing process or trade secret, he shall, unless such disclosure was made in the performance of his duty, be liable to a fine not exceeding one hundred pounds, or to imprisonment for a term not exceeding three months.
- (6) Nothing in this section shall authorise any person, except with the permission of the local authority under the Diseases of Animals Acts, 1894 to 1937, to enter any cowshed or other place in which an animal affected with any disease to which those Acts apply is kept and which is situated in a place declared under those Acts to be infected with such a disease.
- (7) In the exercise on any railway premises of the powers conferred upon him by this section, an officer shall conform to such reasonable requirements of the railway company as are necessary to prevent the working of the traffic of the company being obstructed or interfered with.

It should be noted that if required to do so, the officer must produce a document showing his authority. In the case of the sanitary inspector and medical officer of health, as *ex officio* authorised officers for all purposes of the Act, it is only necessary for them to produce their authority to act as sanitary inspector or medical officer of health(s). It is advisable that the general authority supplied to these officers should include a reference to the Food and Drugs Act, 1938, and the Regulations, etc., made thereunder. It should be emphasised that entry may be made "at all reasonable hours" and it was held that a visit on a Sunday afternoon for the purpose of examining

(s) See the author's "*Sanitary Administration*," Second Edition, 1944, London, Butterworth & Co., Ltd., p. 54.

meat was *not* a reasonable time(*t*). It should also be noted that entry to private dwelling-houses may only be made after giving twenty-four hours' notice.

Where entry is refused, complaint should be made to a justice of the peace who may issue a warrant authorising entry on to the premises. Refusal to comply with the terms of a warrant issued by a justice renders the person concerned liable to a penalty not exceeding £5, in accordance with the provisions of section 78 of the Act of 1938, *infra*.

Section 78, Food and Drugs Act, 1938.—Penalty for obstructing execution of Act.

- (1) A person who wilfully obstructs any person acting in the execution of this Act or of any regulations, byelaw, order or warrant made or issued thereunder, shall be liable to a fine not exceeding five pounds :

Provided that, if the court is satisfied that he committed the offence with intent to prevent the discovery of some other offence under this Act, or if he has within twelve months last preceding been convicted of an offence under this subsection, he shall be liable to a fine not exceeding twenty pounds or to imprisonment for a term not exceeding one month.

- (2) If a sampling officer applies to purchase any food or drug exposed for sale, or on sale by retail, and tenders the price for the quantity which he requires as a sample, and the person exposing the food or drug for sale, or having it for sale, refuses to sell to the officer such quantity thereof as aforesaid, or if the seller or consignor, or any person having for the time being the charge, of any food of which an officer is empowered to take a sample refuses to allow the officer to take the quantity which he requires as a sample, the person so refusing shall, for the purposes of the preceding subsection, be deemed to have wilfully obstructed the officer :

Provided that, where any food or drug is exposed for sale in an unopened container duly labelled, no person shall be required to sell it except in the unopened container in which it is contained.

- (3) A person who fails to give to any person acting in the execution of this Act or of any regulation, byelaw, order or warrant made or issued thereunder, any assistance which that person may reasonably request him to give, or any information which that person is expressly authorised by this Act to call for or may reasonably require, or who, when required to give any such information, knowingly makes any misstatement in respect thereof, shall be liable to a fine not exceeding five pounds :

Provided that nothing in this section shall be construed as requiring a person to answer any question or give any information, if to do so might incriminate him.

GENERAL PROVISIONS RELATING TO OFFICERS.

Protection of officers.—Section 94 of the Act of 1938, *infra*, protects officers of a local authority from personal

(*t*) *Small v. Bickley* (1875), 32 L.T. 726 ; 25 Digest 108, 322.

liability in respect of acts done by them in the execution of the Act.

Section 94, Food and Drugs Act, 1938.—Protection for officers of local authority or county council acting in the execution of their duty.

- (1) An officer of a local authority shall not be personally liable in respect of any act done by him in the execution or purported execution of this Act and within the scope of his employment, if he did that act in the honest belief that his duty under this Act required or entitled him to do it :

Provided that nothing in this subsection shall be construed as relieving a local authority from any liability in respect of acts of their officers.

- (2) Where an action has been brought against an officer of a local authority in respect of an act done by him in the execution or purported execution of this Act and the circumstances are such that he is not legally entitled to require the authority to indemnify him, the authority may, nevertheless, indemnify him against the whole or a part of any damages and costs which he may have been ordered to pay or may have incurred, if they are satisfied that he honestly believed that the act complained of was within the scope of his employment and that his duty under this Act required or entitled him to do it.
- (3) The provisions of this section shall apply in relation to a county council and the officers thereof as they apply in relation to a local authority and the officers thereof.

The effect of this section is to render the local authority and not individual officers liable in respect of damages arising from the enforcement of the Act of 1938. The Local Government and Public Health Consolidation Committee, in their Third Interim Report^(u), stated that "there is substance in the claim that the authority should have power to indemnify an officer who, acting mistakenly but *bona fide*, has exceeded his powers. It seems unnecessary to give any such power in a case where the act complained of was done within the scope of the officer's employment, since, under the general law, the authority in that case would have a power and indeed a duty to indemnify him. All that is required in this case is to secure that the aggrieved person, who normally would have a right of action both against the officer and against the authority, should be limited to proceeding against the authority." Section 94, *supra*, is framed to satisfy this view, subsection (1) relieving the officer of personal liability if the act was done in the execution or purported execution of the Act of 1938 and was within the scope of his employment, and if he did it in the honest belief that his duty entitled or required him to do so. This is a particularly important point in relation to diseased, unsound or unwholesome food. An officer should always give

(u) Cmd. 5628, 1937.

the benefit of any doubt to the consumer and consequently take action with a view to preventing such food from being consumed by the public. In such circumstances, it may well happen that he deals with an article of food which is not, in fact, diseased, unsound or unwholesome, or if it is, that it was not intended for human food. Action taken by an officer in a case of this kind, which might result in a claim for damages or compensation, is covered by section 94, *supra*, and the local authority alone would be liable and not the officer.

Compensation to officers.—Where a local authority or a county council cease to carry out functions under the Act of 1938, compensation is payable to officers whose appointments are determined or emoluments diminished, in accordance with the provisions of section 95 of the Act of 1938, *infra*.

Section 95, Food and Drugs Act, 1938.—Provision for compensation in certain cases to officers of local authorities and county councils.

- (1) If, in consequence of a local authority ceasing, as respects the whole or any part of their area, to be a Food and Drugs authority, either upon the commencement of this Act or at any subsequent date, or in consequence of any such vesting of functions as is mentioned in subsection (2) of section seventy-six of this Act or any transfer or relinquishment of functions under any of the provisions of the Public Health Act, 1936, which are incorporated in this Act, the appointment of any officer of a local authority is determined or his emoluments are diminished, the provisions of subsections (2) to (4) and (6) of section one hundred and fifty of, and the Fourth Schedule to, the Local Government Act, 1933, shall apply in relation to him—
 - (a) as if the cesser, vesting, transfer or relinquishment had taken effect by virtue of an order made by the Minister under Part VI of the said Act of 1933 and coming into operation upon the commencement of this Act or, as the case may be, upon the date on which the cesser, vesting, transfer or relinquishment took effect; and
 - (b) as if the said order provided that any officer who by virtue or in consequence of the order might suffer any direct pecuniary loss by reason of the determination of his appointment or the diminution of his emoluments, and for whose compensation for that loss no other provision was made by or under any enactment for the time being in force, should be entitled to receive compensation from such authority, or from such authorities and in such proportions, as the Minister might determine.
- (2) The provisions of this section shall apply in relation to a county council and the officers thereof as they apply in relation to a local authority and the officers thereof.
- (3) For the purposes of this section, a public analyst shall be deemed to be an officer of the authority by whom he was appointed.

When the Food and Drugs (Milk and Dairies) Act, 1944, comes into operation (see *post*, p. 361), the provisions of section

5 of that Act, *infra*, with respect to compensation for displaced officers, will apply.

Section 5, Food and Drugs (Milk and Dairies) Act, 1944.—Compensation to displaced officers.

- (1) If, in consequence of the passing of this Act or of anything done in pursuance thereof, any officer or servant of a local authority, being a county council or a local authority within the meaning of the principal Act, suffers any direct pecuniary loss by reason of the determination of his appointment or the diminution of his emoluments, he shall be entitled to recover compensation for that loss from that authority :

Provided that no person shall, by virtue of this section, be entitled to recover compensation for any loss if provision is made for compensating him for that loss by or under any other enactment which is for the time being in force.

- (2) For the purposes of this section, an officer or servant—
- (a) who at any time during the period of five years from the date of the commencement of this Act, relinquishes his office by reason of his having been required to perform duties which are not analogous to, or which are an unreasonable addition to, those which he was required to perform immediately before that date ; or
 - (b) whose appointment is determined or whose emoluments are reduced during the period aforesaid because his services are not required or his duties are diminished (no misconduct being established) ;

shall be deemed, unless the contrary is shown, to have suffered direct pecuniary loss by reason of the determination of his appointment or the diminution of his emoluments in consequence of the passing of this Act or of something done in pursuance thereof.

- (3) The provisions of the Fourth Schedule to the Local Government Act, 1933, shall have effect in relation to claims for compensation under this section subject to the following modifications, that is to say—
- (a) references in that Schedule to a scheme or order shall be construed as references to this Act ; and
 - (b) any period during which a person has been engaged in war service shall be reckoned for the purposes of that Schedule as a period of service in his office as therein defined and where any such period is so reckoned his emoluments during that period shall, for the purposes of sub-paragraph (2) of paragraph 4 of the said Schedule, be deemed to be such as he would have received if he had not been engaged in war service.
- (4) In this section the expression “ emoluments ” has the same meaning as in the Local Government Act, 1933.

It should be noted that the officer concerned is entitled to recover compensation from the local authority who employ him and not from the Ministry of Agriculture and Fisheries, to whom his duties are transferred.

Appointment of deputies.—A local authority are empowered by section 115 of the Local Government Act, 1933^(v), to appoint a deputy sanitary inspector or deputy medical officer of health, and in the absence of a properly appointed deputy, a person may act temporarily as sanitary inspector or medical officer of health^(w).

Gifts or gratuities to officers.—An officer of a local authority is prohibited from accepting any fee or reward whatsoever under colour of his office or employment, other than his proper remuneration^(x).

^(v) 26 Halsbury's Statutes 367.

^(w) Sect. 116, Local Government Act, 1933 ; 26 Halsbury's Statutes 368.

^(x) *Ibid*, sect. 123(2) ; 26 Halsbury's Statutes 371.

CHAPTER 4

INSPECTION, SAMPLING AND EXAMINATION OF FOOD AND DRUGS.

INTRODUCTION.

In order that the various authorities(*a*) responsible for enforcing the provisions of the law relating to food and drugs may have information as to the composition and condition of articles of food, extensive powers are conferred upon sanitary inspectors, medical officers of health and other properly authorised officers, enabling them to enter premises(*b*) for the purpose of inspection, examination and sampling of food and drugs. The inspection and sampling of food and drugs constitutes one of the most important duties of sanitary officers, and the work involves the proper training(*c*) and experience of the officers concerned. In view of the fact that the initial inspection, examination or sampling of an article of food or a drug, is the first step which may ultimately lead to court proceedings, it is essential that it should be properly carried out, with strict observance of all the requirements of the law relating to inspection, sampling and examination. The importance of the meticulous attention to detail cannot be over-estimated; failure to observe any of the rules laid down may well lead to a case being dismissed by the court on technical grounds.

The British Standards Institution(*d*) have published a British Standard for the sampling of dairy products(*e*) but this does not apply to the taking of samples by officers of local authorities, who must conform to the provisions of the Act of 1938 and the various Regulations dealing with the sampling of milk and dairy products.

Penalty for obstructing sampling officer.—If a sampling officer applies to purchase any food or drug exposed for sale, etc., and tenders the price for the quantity he requires as a sample, and the person exposing the food or drug for sale, etc., refuses to sell the sample to the sampling officer, or refuses to allow the officer to take a sample in course of delivery or

(*a*) See generally, Chapter 2, *ante*, p. 17.

(*b*) As to powers of entry, see Chapter 3, *ante*, p. 43.

(*c*) As to qualifications of inspectors of meat and other foods, see *ante*, p. 34.

(*d*) 28 Victoria Street, London, S.W.1.

(*e*) British Standard Methods for the Sampling of Dairy Products; B.S., No. 809, 1938; price 2s. net. *

transit, the person concerned is guilty of wilfully obstructing the officer and he is liable to a fine not exceeding £5(f).

INSPECTION OF FOOD.

An authorised officer (see *ante*, p. 33) is empowered by section 10 of the Act of 1938 (see *post*, p. 227), to examine any food intended for human consumption which has been sold, or is offered or exposed for sale, or is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale. Such an officer may examine food in course of transit in any cart, barrow or other vehicle(g).

As to the inspection, seizure and condemnation of food which is unfit for human consumption, see Chapter 8, *post*, p. 275.

SAMPLING FOR CHEMICAL ANALYSIS.

An authorised officer (see *ante*, p. 33) of a food and drugs or of a local authority not being a food and drugs authority (see *ante*, p. 18), is empowered by section 68 of the Act of 1938, *infra*, to obtain samples of food and drugs for analysis, or for bacteriological or other examination. It should be observed that the power of sampling is not confined to officers of food and drugs authorities, subsection (1) clearly empowering an authorised officer of a local authority which is not a food and drugs authority, to act as a sampling officer.

Section 68, Food and Drugs Act, 1938.—Powers of sampling.

- (1) An authorised officer of a Food and Drugs authority, or of a local authority not being a Food and Drugs authority, may exercise such powers of procuring samples of food and drugs for analysis, or for bacteriological or other examination, as are conferred upon him by this section, and any such officer is in this Act referred to as a "sampling officer."
- (2) A sampling officer may purchase samples of any food or drug :
Provided that nothing in this section shall be construed as authorising any purchase or sale of drugs in contravention of the Dangerous Drugs Acts, 1920 to 1932, or regulations made thereunder.
- (3) A sampling officer may take samples of—
 - (a) any butter or cheese, or substances resembling butter or cheese, exposed for sale and not marked in the manner in which margarine, milk-blended butter or margarine-cheese is required to be marked under this Act ;
 - (b) any food, or substance capable of being used in the preparation of food, found on premises which he has entered in the execution of his duties under this Act.

(f) Sect. 78, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 302.

(g) *Ibid*, sect. 12 ; 31 Halsbury's Statutes 260.



- (4) A sampling officer, or an inspector of the Minister, may take samples of milk at any dairy, or at any time while it is in transit, or at the place of delivery to the purchaser, consignee or consumer.

An authorised officer of a county council who, as respects the whole or some part of their county, are not the Food and Drugs authority may exercise the like powers throughout the county or, as the case may be, in that part thereof, and, for the purposes of the subsequent sections of this Act, such an officer shall be deemed to be a sampling officer.

- (5) Where milk sold or exposed for sale within the area of any council is obtained from a dairy situate outside that area, the medical officer of health or any other authorised officer of the council may by notice in writing to the medical officer of health or other authorised officer of a Food and Drugs authority within whose area the dairy is situate, or through whose area the milk passes in transit, request him to procure samples of the milk at that dairy, or while it is in transit, and it shall be the duty of an officer who receives such a notice to procure, as soon as is practicable, samples of the milk in question and to forward those samples to the officer who gave the notice, or to such person as that officer may direct, and, for the purposes of this Act, samples so procured shall be deemed to have been procured within the area for which the last-mentioned officer acts.

- (6) Any power of an authorised officer in respect of procuring samples of milk may be exercised at a place outside the area of the council whose officer he is, if the Food and Drugs authority of the area within which that place is situate have consented to samples of milk being procured within their area by officers of the first-mentioned council, and for the purposes of this Act, any samples so procured shall be deemed to have been procured within the area for which the officer in question acts.

A Food and Drugs authority shall not unreasonably withhold consent for the purposes of this subsection and any question whether or not consent is unreasonably withheld shall be referred to and determined by the Minister.

- (7) A sampling officer may, at the request or with the consent of the purchaser, consignee or consumer, take at the place of delivery samples of any food delivered, or about to be delivered, to the purchaser, consignee or consumer in pursuance of a contract for the sale thereof to him :

Provided that this subsection shall not apply in relation to milk.

- (8) If a sampling officer has reason to believe that any container forwarded by a public conveyance contains margarine, margarine-cheese or milk-blended butter which is not consigned in accordance with the provisions of this Act, he may examine and take samples of the contents of that container.
- (9) In the exercise on any railway premises of the powers conferred upon him by this section in relation to the taking of samples of milk in course of transit, an officer shall conform to such reasonable requirements of the railway company as are necessary to prevent the working of the traffic of the company being obstructed or interfered with.

Sampling officers.—It should be noted that the sanitary inspector and medical officer of health are, *ex officio*, authorised

officers for all purposes of the Act of 1938. Consequently they are authorised "sampling officers" by virtue of their appointments as sanitary inspector and medical officer of health and no further authorisation is necessary. A police constable may act as a sampling officer *provided* he is so authorised with the approval of the police authority concerned. Other officers, *e.g.* inspectors of weights and measures, markets inspectors, etc., must be specially appointed as "authorised officers" for the purpose of the Act of 1938, in order that they may act as "sampling officers" under section 68, *supra*.

It has been held(*h*) that it is not necessary at the hearing for a sampling officer to prove that he has been appointed an authorised officer. It is clearly established that a sampling officer may purchase samples through an agent(*i*).

Methods of sampling.—A sampling officer may—

- (a) *purchase* samples of any food or drug—subsection (2), *supra* ;
or
- (b) *take* samples of—
 - i—any butter or cheese, or substances resembling butter or cheese, exposed for sale and not marked in the manner in which margarine, milk-blended butter or margarine-cheese is required to be marked under the Act of 1938 (see chapter 7, *post*, p. 197) ;
 - ii—any food, or substance capable of being used in the preparation of food, found on premises which he has entered in the execution of his duties under the Act of 1938(*k*)—subsection (3), *supra* ;
 - iii—milk at any dairy, or at any time while it is in transit, or at the place of delivery to the purchaser, consignee or consumer—subsection (4), *supra* ;
 - iv—any food, except milk, delivered or about to be delivered, *with the consent of the purchaser, consignee or consumer*, at the place of delivery—subsection (7), *supra* ; and
 - v—any margarine, margarine-cheese or milk-blended butter forwarded by a public conveyance which the sampling officer has reason to believe is not consigned in accordance with the provisions of the Act of 1938—subsection (8), *supra*.

The expression "transit" includes all stages of transit from the dairy, place of manufacture or other source of origin, to the consumer(*l*). The reference to "milk" includes a reference to cream and to separated milk, but does not include a reference to dried milk or condensed milk(*l*).

(*h*) *Ross v. Helm*, [1913] 3 K.B. 462 ; 25 Digest 107, 316.

(*i*) *Horder v. Scott* (1880), 5 Q.B.D. 552 ; 25 Digest 76, 53.

Stace v. Smith (1880), 45 J.P. 141 ; 25 Digest 71, 9.

Garforth v. Esam (1892), 56 J.P. 521 ; 25 Digest 71, 10.

Massey v. Kelso (1902), 30 Sc.L.R. 645.

Tyler v. Dairy Supply Co., Ltd. (1908), 72 J.P. 132 ; 25 Digest, 71, 12.

(*k*) As to powers of entry, see sect. 77, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 300 ; and see *ante*, p. 43.

(*l*) *Ibid*, sect. 100 ; 31 Halsbury's Statutes 313.

A sampling officer who obtains a sample by way of *purchase* must pay the sum demanded by the seller, but payment is not necessary in the case of a sample *taken* in accordance with the above provisions. Any person who exposes for sale any food or drug, or having it for sale, refuses to *sell* to a sampling officer such quantity of the food or drug as the latter may require, or any seller or consignor, or person having for the time being the charge of any food of which a sampling officer is empowered to *take* a sample, refuses to allow the officer to take the quantity required as a sample, is guilty of obstructing the officer within the meaning of section 78 of the Act of 1938 (see *ante*, p. 45). A person is not required to sell a portion of any food or drug exposed for sale in an unopened container duly labelled and the sampling officer must purchase the whole of the unopened container.

It should be noted that when *taking* samples of milk in course of transit on any railway premises, the sampling officer must conform to the reasonable requirements of the railway company, so as to prevent the working of the railway traffic being obstructed or interfered with—subsection (9), *supra*. This is an important matter, as in large cities and towns many samples of milk are obtained at railway stations in course of delivery from the producer to the wholesaler or retailer.

Although an authorised officer of a county council may *take* samples of milk in any portion of the county for which the county council are not the food and drugs authority (see subsection (4), *supra*), he does not appear to have any power to take samples of other foods or drugs, in spite of the provisions of subsection (3) of section 65 of the Act of 1938 (see *ante*, p. 21), which enables the county council to institute proceedings under the Act or Regulations made thereunder, notwithstanding that they are not the food and drugs authority.

Sampling outside the district of the sampling officer.—The powers of a sampling officer are limited to the obtaining of samples within his own district except in the case of milk. Subsection (6), *supra*, enables a sampling officer to obtain samples of milk outside his own area with the consent of the food and drugs authority concerned. Such authority must not unreasonably withhold its consent to such sampling and in case of dispute the Minister of Health will determine the matter. This provision is of considerable importance, as it enables the sampling officer to follow up unsatisfactory milk supplies, by taking samples in course of delivery or at the place of production, even though to do so he has to sample outside his own area. Where, however, it is not desired to exercise this power, the sampling officer of one area may

request the sampling officer of another area to obtain a sample of milk in the latter area, in accordance with the provisions of subsection (5), *supra*. In such circumstances, the certificate of the officer taking a sample of milk that the provisions of the Act of 1938 with respect to the manner in which samples are to be dealt with, were complied with, must, if a copy of the certificate is served on the defendant with the summons, be sufficient evidence of compliance with those provisions, unless the defendant requires that the officer shall be called as a witness^(m).

PROCEDURE IN REGARD TO SAMPLING OF FOOD AND DRUGS.

A sampling officer may obtain samples of food and drugs without following the procedure laid down in the Act of 1938, which is detailed below. Such *informal samples*, as they are called, are usually obtained without the vendor being aware of the fact, and they are in the nature of trial samples, purchased in order to give the sampling officer an indication of the composition of the food or drugs in question. This procedure, which is very generally followed by sampling officers, is useful in that there is a considerable saving in time when sampling takes place, due to the fact that it is unnecessary to divide the samples into three portions. In some cases, especially with milk samples, it may not be necessary to submit the informal sample to the public analyst, which may be examined by the sampling officer himself with sufficient accuracy to enable him to obtain a fair indication of the composition of the milk (see *post*, p. 76).

In submitting his quarterly report (see *ante*, p. 41), the public analyst is required to differentiate between formal and informal samples.

In every case where it is contemplated that legal proceedings may be necessary, a *formal sample* must be obtained, involving strict compliance with the provisions of section 70 of the Act of 1938, *infra*.

Section 70, Food and Drugs Act, 1938.—Division of, and dealings with, samples.

- (1) A person purchasing a sample of any food or drug with the intention of submitting it to be analysed by a public analyst, or taking a sample of food on any premises with the intention of submitting it to be so analysed, shall, after the purchase has been completed or the sample has been taken, forthwith inform the seller or his agent who sold the sample, or, as the case may be, the occupier of the premises or the person for the time being in charge thereof, of his intention to have the sample analysed by the public analyst, and shall then and there

(m) *Ibid*, sect. 82(2) ; 31 Halsbury's Statutes 305.

divide it into three parts, each part to be marked, and sealed or fastened up, in such manner as its nature will permit, and shall—

- (a) if required so to do, deliver one part to the seller or his agent, or, as the case may be, to the occupier of the premises or the person for the time being in charge thereof ;
- (b) retain one part for future comparison ; and
- (c) if he thinks fit to have an analysis made, submit one part to the public analyst :

Provided that, in relation to samples taken in such circumstances as are mentioned in either of the two next succeeding subsections, the foregoing provisions with respect to the giving of information and the manner of dealing with samples shall have effect as modified by those subsections.

- (2) A person taking a sample of any food while it is in transit, or at the place of delivery to the purchaser, consignee or consumer shall, if he intends to submit it to be analysed by a public analyst, deal with it in the manner provided by the preceding subsection, except that he shall retain the first-mentioned part of the sample unless the name and address of the consignor appear on the container containing the article sampled, in which case he shall forward that part of the sample to the consignor by registered post or otherwise, together with a notice informing that person that he intends to have part of the sample analysed by the public analyst.
- (3) A person purchasing a sample of any food or drug from an automatic machine shall, if he intends to submit it to be analysed by a public analyst, deal with it in manner provided by subsection (1) of this section, except that he shall send the first-mentioned part of the sample by registered post or otherwise, together with such notice as aforesaid—
 - (a) if the name and address of a person stated to be the proprietor of the machine appear thereon, to that person ; and
 - (b) in any other case, to the occupier of the premises on which the machine stands or to which it is affixed.

Before proceeding to obtain formal samples of food and drugs for submission to the public analyst, the sampling officer should be provided with the following equipment :—

- 1—Sufficiently large bag to carry the following articles ;
- 2—Adequate supply of bottles, jars, or other suitable containers, of various types and sizes, to contain the samples—in the case of formal sampling it must be remembered that three bottles, etc., are required for each sample ;
- 3—Corks and stoppers for bottles and containers, etc. ;
- 4—Sealing-wax, with matches, tapers, candles or other means of melting wax ;
- 5—Official seal ;
- 6—Stout envelopes for powders, etc. ;
- 7—Jug with funnel for filling liquids into bottles ;
- 8—Spoon and knife for division of samples into parts ;
- 9—Milk plunger, for mixing contents of milk churns ;
- 10—Duster or towel for cleaning jug, etc. ;
- 11—Gummed labels for bottles, etc. ; and
- 12—Note-book for recording particulars of each sample.

A sampling officer should always carry his written authority from the local authority, which should be produced on demand(*n*).

The procedure to be followed with regard to *formal* samples, whether purchased or taken (see *ante*, p. 53), is detailed below :—

(1) **Obtaining the sample—**

i—In the case of samples which are *purchased*, the sampling officer having asked for the quantity of the food or drug to be sampled, must tender the price therefor to the vendor. The money must be actually tendered for the article the sampling officer wishes to purchase, otherwise no offence is committed under section 78 of the Act of 1938, relative to obstruction (see *ante*, p. 45).

ii—In the case of a sample *taken* instead of purchased, it is important that it should be a fair sample(*o*).

It has been suggested by the Ministry of Health that approximately 3 samples of food and drugs per 1,000 of population should be taken each year, of which 1 sample should be of milk. The Lancashire County Council suggested that in every hundred samples there should be—

			Samples.
Milk and skimmed milk	..	..	65
Other dairy products :			
Butter .. ..	..	..	5
Cheese and cream cheese	..	..	4
Margarine .. ..	..	..	3
Lard and lard substitutes	..	..	2
Other milk products ..	..	..	1
			—15
Compounded articles	..	..	5
Drugs .. ..	..	..	5
Miscellaneous foods	..	..	8
Spirits .. ..	..	..	2(<i>p</i>)

In deciding what food to sample, the sampling officer should keep in close touch with the public analyst, so that new foods and new varieties of old foods may be sampled as they come on the market. It is obviously unnecessary to take many samples of well-known brands of prepacked foods, as they are widely distributed throughout the country and will consequently be liable to be sampled fairly regularly in other districts.

In order that the public analyst may have a sufficient amount of the food or drug to enable him to carry out his

(*n*) *Payne v. Hack* (1893), 58 J.P. 165 ; 25 Digest 72, 23.

(*o*) As to fair sampling of milk, see *post*, p. 72.

(*p*) Memorandum on "*The General Principles and the Law relating to the taking of samples under the Food and Drugs (Adulteration) Act, 1928*," published by the Lancashire County Council ; 1934 ; Preston, para. 8.

analysis, it is essential that the sampling officer should obtain an adequate quantity to enable each one-third portion of the sample to be analysed. The following table gives the quantities of the food and drugs named which should be obtained for each *formal* sample. In the case of informal samples, approximately one-third only of the undermentioned amounts are required.

<i>Food or Drug.</i>	<i>Quantity to be purchased or obtained for formal Sample.</i>
Acetic acid	$\frac{1}{2}$ pint
Almond essence	4 ozs.
Almond oil	4 ozs.
Almonds, ground	4 ozs.
Ammoniated tincture of quinine	6 ozs.
Arrowroot	4 ozs.
Baking powder	4 ozs.
Beer	1 quart
Bicarbonate of soda	6 ozs.
Boracic acid	4 ozs.
Borax	4 ozs.
Boric ointment	2 ozs.
Bread and butter	12 slices
Butter	8 ozs.
Camphorated oil	4 ozs.
Castor oil	6 ozs.
Cheese	12 ozs.
Cheese, cream	12 ozs.
Chicory	8 ozs.
Citric acid	4 ozs.
Cocoa	8 ozs.
Cod liver oil	$\frac{1}{2}$ pint
Coffee	8 ozs.
Coffee and chicory	$\frac{1}{2}$ lb.
Cornflour	4 ozs.
Cream	$\frac{1}{2}$ pint
Curry powder	8 ozs.
Custard powder	4 ozs.
Dried herbs.. .. .	3 ozs.
Dripping	8 ozs.
Eggs, dried	4 ozs.
Epsom salts	4 ozs.
Fish paste	$\frac{1}{2}$ lb.
Flour	2 lbs.
Flour, self-raising	2 lbs.
Fruit, canned	1 lb.
Fruit, dried.. .. .	1 $\frac{1}{2}$ lbs.
Gin	3 quarterns
Ginger, ground	4 ozs.
Glauber salts	6 ozs.
Glycerine	6 ozs.
Golden raising powder	4 ozs.
Golden syrup	1 lb.
Gravy browning	8 ozs.
Gregory's powder	6 ozs.
Honey	1 lb.

<i>Food or Drug.</i>	<i>Quantity to be purchased or obtained for formal Sample.</i>
Iodine, tincture of	6 ozs.
Jam	1 lb.
Lard	8 ozs.
Liquorice powder (compound) ..	6 ozs.
Magnesia	4 ozs.
Margarine	8 ozs.
Marmalade	2 lbs.
Meat, cooked	$\frac{1}{2}$ lb.
Meat paste	$\frac{1}{2}$ lb.
Milk	1 pint
Milk, condensed	2 tins
Milk, dried	8 ozs.
Milk, skimmed	1 pint
Mustard	4 ozs.
Nutmeg, ground	4 ozs.
Oatmeal	4 ozs.
Olive oil	4 ozs.
Parish's syrup	6 ozs.
Pepper	4 ozs.
Peroxide of hydrogen	6 ozs.
Pickles	2 lbs.
Rice	$\frac{1}{2}$ lb.
Rice, ground	$\frac{1}{2}$ lb.
Rum	3 quarterns
Sauces	2 bottles
Sausages	1 lb.
Seidlitz powder	6 powders
Spices, ground	4 ozs.
Sulphur ointment	2 ozs.
Tartar, cream of	4 ozs.
Tartaric acid	4 ozs.
Tea	$\frac{1}{2}$ lb.
Treacle	1 lb.
Vegetables, canned	1 lb.
Vinegar	1 pint
Whisky	$\frac{3}{4}$ pint
Zinc ointment	2 ozs.

(2) **Statutory declaration.**—The purchase having been completed by the payment by the sampling officer of the price charged and the handing of the article to him, he *must* “forthwith inform the seller or his agent who sold the sample, or, as the case may be, the occupier of the premises or the person for the time being in charge thereof, of his intention to have the sample analysed by the public analyst.” The statutory declaration usually takes the following form:—

“I am a sampling officer of the Oxford City Council and I have purchased this sample of milk for the purpose of submitting it to the public analyst for analysis.”

This declaration must be made, even if the vendor knows that a formal sample has been taken, as is the case in many instances.

In short, there are no exemptions and the statutory declaration must be made in *every* case, otherwise proceedings in court would fail(*q*).

It will be observed that the declaration must be given "forthwith," and it was held that a notice given two days after the purchase of the sample was not forthwith(*r*). In another case an agent of the sampling officer purchased gin in an inn, left the premises and returned with the sampling officer within two minutes, when the latter made the statutory declaration, and this was held to have been made forthwith(*s*). It is not sufficient to inform the seller that the sample has been purchased for analysis, he must be informed that it is for analysis by the *public analyst*(*t*). It has been held that the statutory declaration may be made to another person in the shop who was not the actual seller of the sample(*u*), but it is wise in the majority of cases to make the statement to the person actually selling the sample to the sampling officer. In the case of *Rouch v. Hall*(*v*) it was held that a railway porter at a London terminus was not the agent of the farmer who consigned the milk by rail for the purpose of receiving the statutory declaration, but subsection (3) of section 70 (see *ante*, p. 56) now requires the sampling officer, when sending to the consignor the third-portion of the sample by registered post (see *post*, p. 64), to inform him that it is to be analysed by the public analyst.

Most sampling officers include on the printed label (see *post*, p. 62) which is affixed to each portion of the sample (see *infra*) a statement to the effect that the sample has been obtained under the Act of 1938 for the purpose of analysis by the public analyst. This is a very desirable practice *but* it does not absolve the sampling officer from informing the vendor at the time of purchase that the sample is to be analysed by the public analyst.

(3) **Division of sample.**—After the purchase or taking of the sample, it must "then and there" be divided into three parts and the sampling officer must—

- (a) if required to do so, deliver one part to the seller or his agent, or, as the case may be, to the occupier of the premises or the person for the time being in charge thereof; and
- (b) retain one part for future comparison; and
- (c) if he thinks fit to have an analysis made, submit one part to the public analyst.

(*q*) *Barnes v. Chipp* (1878), 3 Ex. D. 176; 25 Digest 102, 252.

(*r*) *Parsons v. Birmingham Dairy Co.* (1882), 9 Q.B.D. 172; 25 Digest 73, 31.

(*s*) *Somerset v. Miller* (1890), 54 J.P. 614; 25 Digest 74, 36.

(*t*) *Barnes v. Chipp*, *supra*.

(*u*) *Davies v. Burrell*, [1912] 2 K.B. 243; 25 Digest 74, 34.

(*v*) (1880), 6 Q.B.D. 17; 25 Digest 102, 253.

Each portion of the sample must be sufficient to enable it to be properly analysed(*w*), and the three portions should be as nearly equal as possible. It is very important that the three parts of the sample should be truly representative of the whole. Where a sampling officer purchased six bottles of camphorated oil and divided them into three lots of two bottles each, putting each lot into a separate bag and sealing them, it was held that the sample had not been properly divided(*x*). But where the contents of four packets of cream of tartar were emptied by the sampling officer, thoroughly mixed together and then divided into three parts, it was held that the sample had been properly divided(*y*). Similarly, where a sampling officer emptied the contents of a number of tins of sardines in olive oil, mixed them together and divided them into three portions, placing each in a jar which was securely sealed(*z*). As to fair sampling in the case of milk, see *post*, p. 72.

From the cases quoted above it is clear that where the quantity of a food or drug normally offered for sale is insufficient to enable a third portion to be analysed and a number of packets, bottles or other containers has to be obtained, the whole of the contents of all the packets, bottles or containers must be removed, thoroughly mixed together and the total quantity divided into three parts, each being placed in a sealed container. This applies also in the case of such articles as sausages, in which case the division must be effected in such a way that one-third of each sausage forms the third-portion of the whole sample.

Where a defendant avails himself of the right to bring some other person before the court whom he alleges is responsible for the offence with which he is charged(*a*), it is not necessary that a third-portion of the sample be given to that other person(*b*), but the third-portion of the sample must be produced in court when proceedings are taken against a previous seller(*c*).

It should be emphasised that the third-portion retained by the sampling officer *must* be produced in court at the time legal proceedings are instituted(*d*), and the court may require this portion of the sample to be submitted to the Government Chemist for analysis(*e*).

(*w*) *Lowery v. Hallard*, [1906] 1 K.B. 398 ; 25 Digest 74, 42.

(*x*) *Mason v. Cowdary*, [1900] 2 Q.B. 419 ; 25 Digest 74, 43.

(*y*) *Smith v. Savage*, [1905] 2 K.B. 88 ; 25 Digest 75, 45.

(*z*) *Winterbottom v. Allwood*, [1915] 2 K.B. 608 ; 25 Digest 75, 50.

(*a*) See sect. 83, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 305 ; and see *ante*, p. 13.

(*b*) *Cummings v. British Fermentation Products, Ltd.*, [1942] 2 K.B. 108 ; [1942] 2 All E.R. 271.

(*c*) *British Fermentation Products, Ltd. v. Teal*, [1943] 1 K.B. 275 ; [1943] 1 All E.R. 331 ; 107 J.P. 94.

(*d*) Sect. 80(4), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 304.

(*e*) *Ibid*, sect. 82 ; 31 Halsbury's Statutes 305.

(4) **Labelling and sealing of sample.**—When a sample has been equally divided into three parts each portion must be placed in a suitable container, which must be properly sealed and marked.

It is the normal practice to use glass bottles or jars for food and drugs samples. The labelling of samples is best effected by the use of gummed labels and the following is suitable for the purpose :—

CITY OF OXFORD.

PUBLIC HEALTH DEPARTMENT.

FOOD AND DRUGS ACT, 1938.

This is part of a sample taken for the purpose of being analysed by the Public Analyst.

No. of Sample..... Date.....

Article.....

Sample obtained by.....

Inspector.

Such labels, which should be available in triplicate, one for each portion of the sample, may conveniently be attached to the sampling officer's note-book which contains particulars of the sample (see *post*, p. 67), being detached when required.

It is not essential to date the sample, although it is always desirable to do so. The fact that the wrong date was marked on a sample did not affect the proceedings(*f*).

The sealing of samples is extremely important. Subsection (1) of section 70 (see *ante*, p. 55) requires that each of the three parts must be "sealed or fastened up, in such manner as its nature will permit." This is usually effected in the following way :—

- 1—*Glass bottles with corks*—corks cut off flush with the top of the bottle and covered completely with sealing-wax, on which the sampling officer's seal is impressed ; or a V-shaped cut is made in the cork into which tape is placed and fastened round the neck of the bottle, each end of the tape is sealed with wax, together with the V-shaped cut. In some towns, after the cork has been sealed, the bottle is placed in a stout envelope which is also sealed with wax ;
- 2—*Glass jars*—these are usually provided with cork linings and metal screw-top covers. After being tightly screwed in position, a quantity of wax is affixed on the specially prepared flattened portion of the jar, overlapping the side of the metal cover. In some cases sampling officers use tape in addition, which, when tied round the jar, is sealed with wax ;

(*f*) *Howe v. Knowles*, [1909] S.C. (J) 61 ; 25 Digest 76, *m*.

3—*Other containers*—it may be convenient to use stout envelopes or bags for certain foods (cereals, spices, condiments, powders, etc.) and these should be securely sealed along the gummed edge, and counter-sealed with wax. The container may also be tied with tape, which itself should be sealed, if considered necessary.

The purpose of sealing samples of food and drugs is to ensure that they are not tampered with before being analysed. Consequently, the sampling officer should adopt a method suitable for each case, which will result in the effective sealing of the sample in a container which will, so far as practicable, retain the sample in an unaltered condition until any legal proceedings are taken. For this purpose glass containers are much to be preferred. Certain foods, particularly milk, are liable to decompose rapidly on keeping, and for this reason it is desirable that every sampling officer should be provided with adequate refrigeration storage to enable him to retain samples in a fresh condition until legal proceedings are instituted. In a case(*g*) where milk fermented, blowing out the cork with the escape of some of the contents of the bottle, with the result that the Government Chemist could not carry out an analysis, it was held that the sampling officer had satisfied the requirements of the Act on sealing and fastening up the sample in such manner as its nature permitted, and it was not a condition precedent to conviction that the portion of the sample produced in court should be capable of analysis. In a case where sardines in olive oil deteriorated after the division of the sample, so that they could not be analysed, it was held that the seller had had a reasonable time to have his portion examined and the conviction was upheld(*h*). Where butter was wrapped in greaseproof paper and lost a considerable amount of water, it was held to have been properly fastened up(*i*).

(5) **Disposal of Samples.**—When the sample has been divided into three parts, each of which has been placed in a suitable container which has been sealed and labelled, the sampling officer must, if required to do so, allow the seller or his agent, to select *one portion* of the sample which may be retained by him and analysed by an independent analyst.

In the case of the *second portion* of the sample, the sampling officer *may* submit it to the public analyst, but he is not bound

(*g*) *Suckling v. Parker*, [1906] 1 K.B. 527; 25 Digest 103, 257.

(*h*) *Winterbottom v. Allwood*, [1915] 2 K.B. 608; 25 Digest 75, 50; and see *Chalmers v. M'Meeking*, [1921] 58 Sc. L.R. 227; 25 Digest 79, s, and 103, 257, i.

(*i*) *Pearks, Gunston & Tee, Ltd. v. Houghton*, [1902] 1 K.B. 889; 25 Digest 87, 143.

to do so unless he considers that it should be analysed(*k*). The sample may be conveyed to the public analyst in any way considered suitable by the sampling officer. It is obviously desirable that the sample should be delivered in person, but where this is not practicable it may be sent by registered post, but this is not now obligatory as was the case under the repealed provisions of the Food and Drugs (Adulteration) Act, 1928(*l*).

The *third portion* must be retained by the sampling officer for production in court should any legal proceedings be instituted. In such circumstances the court may, and if required by either party must, send this portion of the sample to the Government Chemist for analysis(*m*).

Where a sample is taken in transit or at the place of delivery, the first portion of the sample must be sent to the consignor if his name and address appears on the container from which the sample was obtained, but this must not be done if the name and address of the consignor is *not* on the container, even if the sampling officer is aware of his name and address. It was held(*mm*) that where a sampling officer took a sample of food at the request of the shopkeeper a week after its delivery at the shop by the consignor, divided it into three parts but did not give the statutory declaration to the shopkeeper or hand him one part of the sample, but three days later sent one part, with a notification of his intention to submit the sample to the public analyst, to the consignor by registered post, the requirements of section 70(2) of the Act of 1938 (see *ante*, p. 55) had been complied with. In this connection it should be remembered that Article 29 of the Milk and Dairies Order, 1926(*n*), requires the name and address of the owner of every churn used for the conveyance of milk by rail or road, to be marked thereon. Unfortunately, this requirement does not relate to the ownership of the milk but of the churn, and it frequently happens nowadays that churns used by a farmer belong to some other person, so that the name on the churn itself is not always the name of the person who consigned the milk contained in it. The portion of the sample sent to the consignor must be forwarded by registered post and in doing so the sampling officer must comply with the regulations of the Post Office.

So much of any contract as requires a purveyor of milk, on a sample of milk being procured under the Act of 1938, to

(*k*) See sect. 69(1), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 296 ; and see *post*, p. 80.

(*l*) Sect. 18(3) ; 8 Halsbury's Statutes 896.

(*m*) Sect. 82, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 305.

(*mm*) *Southwell v. Ross*, [1945] 2 All E.R. 590.

(*n*) S.R. and O., 1926 ; No. 821 ; and see *post*, p. 385.

send to the person from whom he obtained the milk any part of such sample, or to give to that person notice that a sample has been so procured, has no effect(o).

(6) **Recommendations of Ministry of Health regarding collection and disposal of samples.**—The following are the suggestions of the Ministry of Health with regard to the collection and disposal of samples of food and drugs(p).

Memo. 36/Foods, Ministry of Health (Revised 1939).

.....

- 11—The quantity of any article purchased should be sufficient to enable a satisfactory analysis to be made of each of the three portions into which the sample is divided, but should not be so large as to attract special attention. In any case of doubt the Public Analyst should be consulted as to the quantity required.
- 12—The three portions should be made as nearly equal as possible.
- 13—In the case of such an article as milk care should be taken to secure an even distribution of the constituent parts of the sample before it is divided. Where milk is sold in bottles or cartons it may be useful for this purpose to pour the milk into a larger vessel and thoroughly mix by use of a plunger or repeated pourings. A small quantity should then be returned to rinse out the bottle or carton before the final mixing by plunging or repeated pouring from vessel to vessel.
- 14—The bottles used for liquids should have a narrow neck and should be filled as nearly as possible, since if the samples are shaken in transit the use of bottles much too large for the contents may result in a separation of some of the constituents of the liquids.
- 15—Such bottles should be closed with suitable stoppers fitting so tightly as to secure the contents with no aid from the wax used for sealing. The sealing should be carried out in such a way as to ensure that the stopper cannot be removed without breaking the seal. Where corks are used as stoppers, care should be taken to see that they are new, sound and well softened, and it is recommended that the cork should be driven in as far as it will go, and cut off flush with the rim of the bottle, the top of the cork and the rim of the bottle being then covered with wax and sealed. The wax should reach well down over the lip of the bottle and the seal should incorporate a distinctive mark. As an alternative, the cork may be slit down to a quarter of its length, and string drawn through and securely fastened round the neck, the ends afterwards being carried to the top of the cork and sealed thereon. Another method is referred to in paragraph 19 below.

(o) Sect. 71(3), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 298.

(p) Memo. 36/Foods (Revised 1939), Ministry of Health.

- 16—Samples of solid fatty substances such as butter, margarine, lard or dried milk, in which it is important that the proportions of fat and water should be accurately determined, should be placed without paper (since paper acts as an absorbent) in a dry, wide-mouthed, stoppered bottle, or glazed earthenware jar. It is an advantage to use a screw-capped bottle having a mouth as nearly as possible of the full width of the bottle. The screw-cap should be lined with cork covered with a disc consisting of a paper base impregnated with a greaseproof, non-absorbent insoluble material. The sample can be placed in such a bottle without pressure, and can be easily removed by the analyst.
- 17—All bottles should be of such type as to give security to the samples in transit. A bottle with a round cross-section is more suitable than a flat medicine bottle.
- 18—Labels, which should be printed in triplicate and bear serial numbers so as to avoid any confusion, should be securely affixed to the receptacles containing the three portions of the sample. The vendor should be given an opportunity of verifying the identity of the three labels used. The correct description of the article asked for should always appear on the label. It is advisable to seal the edge of the label to the receptacle, so that it cannot be removed by soaking.
- 19—In all cases where a screw-capped bottle or any receptacle which cannot conveniently be sealed is used it should be labelled with the necessary particulars, and enclosed in an envelope of stout paper secured at the ends with the official seal. The serial number and other particulars should be placed both on the bottle and on the envelope.
- 20—It is particularly important that there should be no doubt about the nature of "appeal to cow" samples, and where cows are milked under the supervision of a sampling officer he should ensure that an adequate number of witnesses, officials or others, are present. A sample of such a milking submitted to a Public Analyst should be marked "appeal to cow sample," or in some other distinctive way to indicate the circumstances in which it was taken.
- 21—When a sample of a prescribed medicine is taken, the height of the contents in the bottle supplied by the vendor should be marked in his presence prior to the division of the sample. The bottle so marked should be submitted to the Analyst in order to enable him to determine the total quantity of medicine supplied.
- 22—The retained portion of any perishable article should be kept at an equable and cool temperature in a dark place.
- 23—It is desirable that articles of food which experience shows to be likely to contain preservatives should be examined for preservatives. Where a sample is taken for the determination of the sulphur dioxide content, it should be placed in an air-tight receptacle so as to minimise the loss of sulphur dioxide which normally occurs on keeping, and which may be accelerated by exposure to air.

.....

(7) **Particulars of samples of food and drugs.**—In addition to the information contained on the labels affixed to samples

of food and drugs, it is necessary for the sampling officer to record full particulars of the sample at the time he purchases or takes it. For this purpose it is desirable that he should be supplied with a pocket-book or loose cards, on which the relevant information can be recorded. A suitable form of record is as follows :—

CITY OF OXFORD. PUBLIC HEALTH DEPARTMENT.

FOOD AND DRUGS ACT, 1938.

No. of Sample Article Sampled
 Date..... Time..... Quantity..... Price paid.....
 Name of Vendor
 Address of Vendor
 Name of Person from whom Sample obtained
 If prepacked, particulars of packing and method of division of Sample

(a) **Retail Samples:** Name of Producer or Wholesaler.....
 or Address of Producer or Wholesaler.....

(b) **In Course of** Time of Delivery to Retailer.....
Delivery: Place of Delivery
 Quantity of Milk from which Sample taken.....
 Particulars of Consignment.....
 (e.g. Total quantity, Label Particulars).....

(c) **Appeal to Cow:** No. of Cows in Milk Nights or Mornings
 Sample obtained by in presence of
 Remarks

MILK SAMPLES:—

CITY OF OXFORD. <i>Public Health Department.</i>	CITY OF OXFORD. <i>Public Health Department.</i>	CITY OF OXFORD. <i>Public Health Department.</i>
FOOD AND DRUGS ACT, 1938. This is part of a sample taken for the purpose of being analysed by the Public Analyst.	FOOD AND DRUGS ACT, 1938. This is part of a sample taken for the purpose of being analysed by the Public Analyst	FOOD AND DRUGS ACT, 1938. This is part of a sample taken for the purpose of being analysed by the Public Analyst.
No. of Sample..... Date.....	No. of Sample..... Date.....	No. of Sample..... Date.....
Article	Article	Article
Sample obtained by Inspector.	Sample obtained by Inspector.	Sample obtained by Inspector.

The sampling officer should also keep a register of all samples, informal and formal, which he obtains, showing details of the samples, and the result of the analyses carried out by the public analyst. A suitable form of register is as follows :—

SPECIAL PROVISIONS WITH REGARD TO THE SAMPLING OF MILK.

The provisions of the Act of 1938 relating to the procuring of samples by sampling officers, and proceedings in connection therewith, have effect, in relation to milk, subject to the provisions of the Third Schedule to the Act(*q*), *infra*.

Third Schedule, Food and Drugs Act, 1938.—Special Provisions as to the Sampling of Milk.

- (1) Where a sample of milk is procured from a purveyor of milk, he shall, if required to do so by the person by whom or on whose behalf the sample was procured, state the name and address of the seller or consignor from whom he received the milk.
- (2) Within sixty hours after the sample was procured from the purveyor, he may serve on the authority by whose officer it was procured, or, if it was not procured by an officer of any authority, on the Food and Drugs authority within whose area it was procured, a notice stating the name and address of the seller or consignor from whom he received the milk and the time and place of delivery to himself of milk from a corresponding milking, and requesting the authority to take immediate steps to procure, as soon as practicable, a sample of milk from a corresponding milking in the course of transit or delivery to himself from the seller or consignor :

Provided that—

- (a) if such a sample has been so procured since the sample in question was procured, or had been so procured within twenty-four hours prior to that sample being procured, it shall not be necessary for the authority to procure another sample in accordance with the notice ; and
 - (b) the purveyor shall have no right to require that such a sample shall be procured if the milk from which the sample procured from him was taken was a mixture of milk obtained by him from more than one person.
- (3) If a purveyor has served on the authority such a notice as aforesaid, and the authority have, in a case not falling within proviso (a) to the preceding paragraph, omitted to procure a sample of milk from the seller or consignor in accordance with the foregoing provisions, no proceedings under this Act shall be taken against the purveyor in respect of the sample procured from him.
 - (4) Any sample so procured in the course of transit or delivery shall be submitted for analysis to the analyst to whom the sample procured from the purveyor is or was submitted.
 - (5) If proceedings are taken against the purveyor, a copy of the certificate of the result of the analysis of every sample so procured in the course of transit or delivery shall be furnished to him, and every such certificate and copy shall, subject to the provisions of section eighty-one of this Act, be admissible as evidence on any question whether the milk sold by the purveyor was sold in the same state as it was in when he purchased it.
 - (6) The authority by whose officer, or within whose area, the first-mentioned sample was procured may, instead of, or in addition to, taking proceedings against the purveyor, take proceedings against the seller or consignor.

- (7) If a sample of milk of cows in any dairy is procured in course of transit or delivery from that dairy, the dairyman may, within sixty hours after the sample was procured, serve on the authority by whose officer the sample was procured a notice requesting them to take immediate steps to procure as soon as practicable a sample of milk from a corresponding milking of the cows and, thereupon, paragraphs (2) to (5) of this Schedule shall, so far as applicable, apply with any necessary modifications :

Provided that the person procuring the sample shall be empowered to take any such steps at the dairy as may be necessary to satisfy him that the sample is a fair sample of the milk of the cows when properly and fully mixed.

Milk must contain not less than 3 per cent. milk fat and 8.5 per cent. solids-not-fat, otherwise it is presumed, until the contrary is proved, to have been adulterated(*r*).

The procedure laid down in the Third Schedule is designed to protect retailers, wholesalers and producers from conviction in respect of alleged adulterated milk, when the offence is committed by some other person, or the deficiency in milk fat and/or solids-not-fat is due to natural causes or the milk is sold in the same state as it came from the cow. Although there have been many cases dealing with the adulteration of milk, the position is substantially as laid down in the case of *Hunt v. Richardson(s)*, where it was held that no offence is committed if it can be proved that the milk is sold in the same state as it came from the cow (although strong proof of this is needed(*t*)), irrespective of the amount of fat and solids-not-fat it contains (see *post*, p. 122).

It will be seen that so far as milk is concerned, there are three types of samples :—

- 1—Samples obtained from retailers before delivery to the consumer—" retail samples " ;
- 2—samples taken in transit or in course of delivery from the producer or wholesaler to the retailer, before delivery to the retailer takes place—" samples in course of delivery " ; and
- 3—samples taken at the place of production, immediately after milking—" appeal to cow " samples.

Retail samples.—The procedure with respect to retail samples is exactly as laid down in the section of this chapter dealing with the sampling of food and drugs generally (see *ante*, p. 55), with the addition that the sampling officer is entitled to be supplied by the retailer with the name and address of the person or persons from whom he receives the milk—pargaraph (1) of Schedule Three, *supra*.

(*r*) Sale of Milk Regulations, 1939, S.R. and O., 1939, No. 1417 ; and see *post*, p. 121.

(*s*) [1916] 2 K.B. 446 ; 25 Digest 128, 492.

(*t*) *Jenkins v. Williams* (1939), 103 J.P. 183 ; Digest Supp.

Where milk to be sampled is contained in sealed bottles, care must be taken to remove the *whole* of the contents of the bottle for division into three parts. To do this it is essential that the contents of the sealed bottle should be emptied into a larger jug. A small quantity of milk should be poured back in order to rinse the bottle to remove any fat that may have adhered to the sides of the bottle. This process must be repeated until all the fat has been removed.

Samples in course of delivery.—If the retailer wishes to protect himself against the possibility of legal proceedings being taken in respect of adulterated milk which may be due to the action of the person from whom he receives it, he must follow the procedure laid down in paragraph (2) of the Third Schedule, *supra*, and serve notice on the sampling officer who obtained a sample of his milk, requesting that a sample of milk from a corresponding milking should be taken in course of transit or delivery to him and before he actually takes delivery of it. In some districts, retail purveyors of milk make a practice of serving such a notice as a matter of routine, and from the dairyman's point of view this has much to commend it. In many areas it is usual for the sampling officer, without waiting for the receipt of a notice from the retailer, to obtain a sample in course of delivery, and this too is a desirable practice, as it is designed to find the guilty person, and avoid action being taken against a person who is not responsible for the adulteration of the milk. It is important that the sample in course of delivery should be taken from milk from a corresponding milking—nights or mornings—to that from which the retail sample was taken^(u).

During the war emergency the Minister of Food has arranged that all milk shall be sold by the producers to the Milk Marketing Board. This has created some confusion as to the position under the Act of 1938, but in a case^(v) where the farmer, in his agreement with the Board, undertook to place the milk at a collecting point approved by the Board, and the property in the milk passed to the Board at that place, it was held that the magistrates were right in holding that the milk was not in the possession of the farmer. In a further case^(vv), the farmer agreed with the Milk Marketing Board that he would be responsible for the condition of the milk after it had been collected by the Board's haulier until it reached its destination, and it was held that the sale of the milk was deemed to take place at the place of destination and not the point where the haulier picked up the milk outside

^(u) As to variations in the quality of nights and mornings milk, see *post*, p. 132.

^(v) *Oliver v. Goodger*, [1944] 2 All E.R. 481.

^(vv) *Watson v. Coupland*, [1945] 1 All E.R. 217.


the farmer's premises. This is a point of considerable importance and should be carefully watched in all cases relating to samples taken in course of delivery, in which the Milk Marketing Board may be concerned.

It will be noted that a retailer cannot demand a sample of milk to be taken in course of delivery if his retail milk consists of mixed milk from a number of different sources. In other words, such a retailer is responsible for the acts of the persons from whom he obtains his milk. In such cases, however, it is frequently the practice of sampling officers to take samples of the milk of each producer in course of delivery to the retailer in order to detect the milk which is not up to the prescribed standard.


It is most important that the sample taken in course of delivery, which is actually "taken" by the sampling officer and not purchased, should be properly obtained so as to be truly representative of the whole consignment. This is particularly so where the milk is contained in a number of churns or receptacles.

Where a sample is taken from a single churn or container care must be taken to plunge the milk adequately so as to ensure the proper mixing of the whole of the contents of the churn. If this is not done, the composition of the sample will depend on the position in the churn from which it is obtained, due to the fact that the lighter fat globules will rise to the surface to form the layer of cream. The following figures obtained by Johnson^(w) show that whilst in one case wide differences in composition occurred according to the method of obtaining the sample, in other instances there was practically no variation. In every case, however, the sampling officer must mix the contents of the churn before obtaining the sample.

(a) *Three samples of milk taken from one churn at the same time :—*

	.....(1)	% Fat. 7.22.....Plunger not used.
	.....(3)	3.27.....Plunger used and milk thoroughly mixed.
	.....(2)	2.26.....Plunger not used.


(b) *Three samples of milk taken from one churn at the same time :—*

	.....(1)	% Fat. 3.45.....Plunger not used.
	.....(3)	3.40.....Plunger used and milk thoroughly mixed.
	.....(2)	3.40.....Plunger not used.


(w) Johnson, F. (1930 and 1931) Private communications.

To test the rate at which fat rises in a churn, Johnson also obtained the following conflicting results.

(a) *Three samples taken from one churn to show the time taken for fat to rise :—*

	.....(2)	% Fat. 4.94.....	Interval of 15 minutes after plunging.
	.....(1)	3.33.....	Plunger used and milk thoroughly mixed.
	.....(3)	2.58.....	Interval of 15 minutes after plunging.

(b) *Three samples taken from one churn to show the time taken for fat to rise :—*

	.....(2)	% Fat. 3.20.....	Interval of 30 minutes after plunging.
	.....(1)	3.15.....	Plunger used and milk thoroughly mixed.
	.....(3)	3.15.....	Interval of 30 minutes after plunging.

In the case of a consignment of milk contained in a number of churns or receptacles, it is necessary to ensure that the result of the analysis is truly representative of the *whole* of the consignment in all the churns or receptacles. This may be achieved in a number of ways. Where the number of churns is small and it is possible to empty the contents of all of them into a receiving tank at the dairy, a single sample may be taken from the mixed milk in the tank, care being taken to mix the milk thoroughly before taking the sample. Where there are no facilities for emptying the milk from all the churns into a single container, a composite sample may be obtained by thoroughly mixing the contents of *each* churn and abstracting a small portion of milk from each of them, placing it in the sampling jug, mixing the contents of the jug and dividing into three parts as in the normal way. In a case(x) where 22 gallons of milk were consigned in two cans of eight gallons and one of six gallons, the two eight-gallon churns and four gallons out of the six-gallon churn, were mixed together in one container and a sample taken. A second sample was obtained from the remaining two gallons. It was held that the sample obtained from the two gallons was not a fair sample of the contents of the six-gallon churn. In a further case(y) 42 gallons were conveyed in six churns of different sizes. A separate sample was obtained from four churns, and one sample from the mixing of the contents of the remaining two churns. The five samples were analysed separately and the result averaged by the public analyst. This was held to be fair sampling. A

(x) *Crawford v. Harding*, [1907] S.C. (J.) 11; 25 Digest 127, p.

(y) *Lamont v. Rodger*, [1911] S.C. (J.) 24; 25 Digest 107, c.

similar decision was given in another case(z), where separate samples were taken from each of three churns and separate analyses were made. The results were averaged to obtain the composition of the whole consignment. Although it has been held(a) that a sample may be obtained from each churn and that a separate offence is committed in respect of each sample found to be adulterated, it is now the generally accepted rule that where a contract is entered into to supply a given quantity of milk, the consignment must be considered as a whole and one offence only can be committed(b). In such cases, therefore, each sample must be representative of a single churn or a number of churns; and the results of the analyses must be averaged so as to obtain the average composition of the whole of the consignment. When forwarding samples to the public analyst which have been obtained from a number of churns of milk together forming one consignment, the sampling officer must inform the public analyst of this fact, stating the quantity of milk from which each sample has been obtained.

As to the disposal of samples of milk taken in course of delivery, see *ante*, p. 64. Such samples *must* be submitted to the same public analyst as examined the retail sample, and the analyst should be informed, when the sample in course of delivery is sent to him, that it is from the same source from which the retail sample was obtained previously.

“Appeal to cow” samples(bb).—The procedure detailed above with respect to the taking of samples in course of delivery, may be applied in the case of milk at the time of production on the farm. In this case, the object is to ascertain whether the milk from the cows is up to the standard prescribed. “Appeal to cow” samples necessitate the sampling officer being present at the farm during the full period of milking, so that he can satisfy himself that the whole of the cows contributing to the original sample have been properly and fully milked. He is entitled to take such steps as may be necessary to ensure that this is so. It is always desirable that the sampling officer should be accompanied by some reliable person to act as a witness and, if necessary, to assist in keeping all the cows under observation during the period of milking. The sampling officer should endeavour to ascertain whether there is likely to be any cause of the deficiency in the composition of the milk and in this connection particular attention should be paid to the milk-cooler, which may be found to be leaking, thus permitting water to enter the milk as it passes over the cooler. Attention should also be directed to the efficiency of the milking, to ascertain

(z) *Wildridge v. Ashton*, [1924] 1 K.B. 92; 25 Digest 75, 46.

(a) *Fecitt v. Walsh*, [1891] 2 Q.B. 304; 25 Digest 102, 250.

(b) *Telford v. Fyfe*, [1908] S.C. (J.) 83.

(bb) See page 138 as to day-to-day variations in composition of milk.

whether the cows are properly "stripped" (see *post*, p. 133).

"Appeal to cow" samples must also be sent to the same public analyst to whom the previous samples were sent, with an intimation that they are from the same source as the other samples. Each sample should be marked "Appeal to cow sample."

It should be noted that a warranty defence(c) can only be sustained in the case of legal proceedings in respect of milk if the provisions of the Third Schedule have been carried out.

The procedure described above with respect to the sampling of milk frequently results in three sets of samples being taken from milk from the same source of production. The following particulars relate to samples taken in this way and clearly demonstrate the value of the procedure in detecting at what point, if any, milk has been adulterated.

Case No. 1.				Milk fat	Solids-not-fat
				%	%
Retail sample	..	..	..	2.84	8.00
Samples in course of delivery to re-tailer from producer	..	..	{	3.45	8.80
				3.63	8.78
				3.45	8.90

This shows that the milk had been adulterated after it left the producer and the retailer was responsible for the offence.

Case No. 2.				Milk fat	Solids-not-fat
				%	%
Retail sample	..	..	..	2.75	8.20
Samples in course of delivery to re-tailer from producer	..	..	{	2.57	8.07
				2.90	8.38
				2.50	8.13
				3.30	8.80
"Appeal to cow" samples	..		{	3.45	8.65
				3.60	8.90

These samples show that the milk had been adulterated when it left the farm and before it reached the retailer, but the "appeal to cow" samples show that the milk produced by the cows was up to the prescribed standard.

Consequently, the producer was responsible for the offence and not the retailer.

Case No. 3.				Milk fat	Solids-not-fat
				%	%
Retail sample	..	..	..	2.65	8.35
Samples in course of delivery to re- tailer from producer	..	..	{	3.50	8.50
				2.55	8.50
				2.45	8.50
				2.80	8.25
				2.60	8.14
"Appeal to cow" samples	..		{	3.00	8.51
				3.10	8.33
				2.95	8.31

These samples show that the milk was below the prescribed standard when it left the farm and the "appeal to cow" samples show that the milk produced by the cows was also below the standard.

Consequently no offence was committed, as the milk sold by the retailer was in the same state as that produced by the cows.

(c) See s. 84, F. and D. A., 1938; 31 Halsbury's Statutes 306; and *post*, p. 175.

Testing of informal samples of milk.—As pointed out previously (see *ante*, p. 55) it is not necessary on every occasion to take formal samples and, so far as milk is concerned, it is commonly the practice for the sanitary inspector to examine samples himself by the Gerber process, which, briefly, is carried out as follows :—

Examination of Milk by the Gerber Process.

Technique—

- 1—Mix the milk thoroughly ;
- 2—Take specific gravity with lactometer ;
- 3—Take 10 ml. standard H_2SO_4 ;
- 4—Put into special " Gerber " test bottle ;
- 5—Take 1 ml. of standard amyl alcohol ;
- 6—Put into same bottle ;
- 7—Take temperature of milk in Fahr. ;
- 8—Add 11 ml. of the milk to be tested to the Gerber bottle ;
- 9—Thoroughly mix H_2SO_4 , amyl alcohol and milk in the test bottle by shaking ;
- 10—Put test bottle in rotary machine or centrifuge ;
- 11—Spin for approximately 4 minutes, according to temperature ;
- 12—Remove bottle from centrifuge and read off fat directly, which will have separated off in the top, graduated portion, of the bottle.

The percentage of solids-not-fat is obtained by calculation, using the formula—

$$\text{S.N.F.} = \frac{1}{4} \text{ S.G.} + \frac{1}{5} \text{ Fat} + 0.14.$$

At standard temperature of 60° Fahr.

Adjustment for temperature—

$$8^\circ \text{ Fahr.} = 1^\circ \text{ lactometer.}$$

Example :—

$$\begin{aligned} \text{S.N.F.} &= \frac{1}{4} \times 33.87 + \frac{1}{5} \times 3.0 + 0.14. \\ &= 8.47 + 0.6 + 0.14. \\ &= 9.21 \text{ per cent.} \end{aligned}$$

Therefore :—

Sample contains 3.0 per cent. milk fat and 9.21 per cent. solids-not-fat.

Sealing of milk churns.—Where a person is charged with any offence under the Act of 1938, or Milk and Dairies or Food Regulations made thereunder (see *ante*, p. 9), in respect of a sample of milk taken after it has left his possession, it is a defence to prove that the churn or other vessel in which the milk was contained was effectively closed and sealed at the time when it left his possession but had been opened before the person by whom the sample was taken had access to it(d). Where milk is conveyed by rail the churns may be sealed provided the tare weight is shown on the churn, and in all cases the railway companies retain the right to check the weight of milk conveyed. There is no extra charge for the conveyance of sealed churns. It is most desirable that churns

(d) Sect. 71(2), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 298.

should be sealed before transit, as by this means alone is it possible to ascertain whether they have been tampered with during transport.

SAMPLING BY OFFICERS OF GOVERNMENT DEPARTMENTS.

Section 72 of the Act of 1938, *infra*, enables the Ministers of Health and Agriculture to authorise officers of their departments to procure samples of any specified food, and in such circumstances the officers have all the powers of a sampling officer under the Act of 1938.

Section 72, Food and Drugs Act, 1938.—Power of Ministers of Health and Agriculture to have foods analysed and examined.

- (1) The Minister, in relation to any matter appearing to him to affect the general interests of consumers, and the Minister of Agriculture and Fisheries, in relation to any matter appearing to him to affect the general interests of agriculture in the United Kingdom, may direct an officer of his department to procure samples of any specified food, and thereupon the officer shall have all the powers of a sampling officer, and this Act shall apply as if he were a sampling officer, except that—
 - (a) if he intends to submit any sample procured by him to be analysed, he shall divide it into four parts, and shall deal with three of those parts in the manner directed by the last but one foregoing section, and send the fourth part to the Minister concerned; and
 - (b) any fee for analysis shall be payable to the analyst by the Food and Drugs authority of the area in which the sample is procured.
- (2) The Minister concerned shall communicate the result of the analysis of any such sample to the Food and Drugs authority and, thereupon, they shall have the like duty to cause proceedings to be taken as if one of their officers had procured the sample and sent it to be analysed.

It should be noted that samples obtained by officers in this way must be divided into *four* parts, the fourth part being sent to the appropriate Minister. The portion of the sample sent for analysis must be sent to the public analyst of the area in which the sample was obtained, but the officer has the right to decide whether to submit the sample for analysis or not (see *ante*, p. 63). It is doubtful whether a food and drugs authority have a duty to institute proceedings in respect of such samples reported by the public analyst as adulterated, and, in fact, such a course is never adopted by authorities as a matter of routine. In every case the authority or the responsible officer exercises the discretion normally adopted in all cases where an offence under the Act of 1938 has been committed. Section 65 of the Act of 1938 (see *ante*, p. 21),

which imposes duties on food and drugs authorities, does not specifically require the institution of legal proceedings in respect of every contravention of that Act.

An officer of the Ministry of Agriculture and Fisheries may be authorised by the Minister to take samples of any butter, margarine, margarine-cheese or milk-blended butter, or any substance capable of being used in the manufacture, treatment or adulteration of any of those articles, in any premises registered under section 34 of the Act of 1938 (see *post*, p. 200)(*e*).

An officer of the Ministry of Health may be authorised to take samples of preserved foods or of any substances used or capable of being used in the preparation of any such article and of any labels affixed to the article or to any package or container in which the article is placed, but must pay for the samples if required to do so(*f*).

Officers of the Customs and Excise are empowered to take samples of consignments of imported food, which must be divided into not less than three parts, one part being sent to the importer, one to the Government Chemist, and one retained by the officer taking the sample(*g*).

SAMPLING OF SPECIAL ARTICLES OF FOOD.

In addition to the general provisions of the Act of 1938 relating to the sampling of food and drugs, there are special powers, summarised below, which authorise the sampling of certain articles of food, etc.

Condensed milk.—The medical officer of health or any officer authorised by him or by the food and drugs authority, may procure any sample of condensed milk and, if necessary, submit it to the public analyst for analysis, forthwith notifying the seller or his agent of his intention to do so. The provisions of the Act of 1938, already detailed in this chapter, relating to the division of samples into three parts, and the separation, marking and disposal of such parts, apply to samples of condensed milk(*h*).

Dried milk.—The medical officer of health or any officer authorised by him or by the food and drugs authority, may procure any sample of dried milk and, if necessary, submit it to the public analyst for analysis, forthwith notifying the

(*e*) Sect. 73, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 298.

(*f*) Art. 6, Public Health (Preservatives, etc., in Food) Regulations, 1925 ; S.R. and O., 1925, No. 775 ; as amended ; and see Chapter 6, *post*, p. 177.

(*g*) Sect. 41, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 280 ; and see *post*, p. 234.

(*h*) Art. 5, Public Health (Condensed Milk) Regulations, 1923 to 1943 ; and see *post*, p. 217.

seller or his agent of his intention to do so. The provisions of the Act of 1938, already detailed in this chapter, relating to the division of samples into three parts, and the separation, marking and disposal of such parts, apply to samples of dried milk, except where the sample is procured for the purpose of testing the quantity of milk, partly skimmed milk, or skimmed milk (see *post*, p. 222) of which the contents of a tin or other receptacle are the equivalent(*i*).

Preserved foods.—Any officer of a food and drugs authority may take samples of any article to which the Public Health (Preservatives, etc., in Food) Regulations, 1925(*k*), apply, or of any substance used or capable of being used in the preparation of any such article and of any labels designed to be affixed to any such article or to any package or other receptacle containing such article, but the officer must pay for the sample if required to do so. The provisions of the Act of 1938, already detailed in this chapter, relating to the division of samples into three parts, and the separation, marking and disposal of such parts, apply to samples of preserved foods, etc.(*l*).

Imported food-stuffs.—An authorised officer of a food and drugs authority may, on payment, take samples of imported food-stuffs to which an Order made under the Merchandise Marks Act, 1926(*m*), applies. The officer must forthwith notify the person on whose premises the sample is taken or his agent that the sample is taken in pursuance of the provisions of the Act of 1926, and, if required to do so at the time of giving such notification, he must select a second like sample or divide the original sample into two parts, and he must mark and seal and leave with that person or his agent either the second sample or one part of the divided sample(*n*).

Designated milk.—A duly authorised person of the licensing authority (see *post*, p. 414) is empowered to take samples of milk free of charge, from any person holding a licence to use a special designation granted under the provisions of the Milk (Special Designations) Regulations, 1936 to 1946 (see *post*, p. 411).

Fertilisers and feeding stuffs.—Inspectors and official samplers are empowered by section 12 of the Fertilisers and Feeding Stuffs Act, 1926 (see *post*, p. 572), to enter premises

(*i*) Art. 5, Public Health (Dried Milk) Regulations, 1923 to 1943; and see *post*, p. 222.

(*k*) S.R. and O., 1925, No. 775, as amended; and see Chapter 6, *post*, p. 177.

(*l*) *Ibid*, art. 6.

(*m*) 19 Halsbury's Statutes 898.

(*n*) Sect. 9(2), Merchandise Marks Act, 1926; 19 Halsbury's Statutes 904; and see *post*, p. 358.

and obtain samples of fertilisers and feeding-stuffs. As to the method of taking such samples, see *post*, p. 574.

ANALYSIS OF SAMPLES.

In order that samples of food and drugs may be analysed or otherwise examined, food and drugs authorities are required to appoint public analysts(*o*). A county council or local authority may provide facilities for bacteriological and other examinations of samples of food and drugs(*p*). Where experiments on animals are carried out in a bacteriological laboratory (*e.g.* inoculation of guinea pigs for detection of tuberculous milk, etc.), the bacteriologist must obtain a special licence from the Secretary of State, and the animal house must also be licensed(*q*).

The right to have samples of food and drugs analysed is conferred by section 69 of the Act of 1938, *infra*.

Section 69, Food and Drugs Act, 1938.—Right to have samples analysed.

- (1) If a sampling officer who has procured a sample of any food or drug considers that it should be analysed, he shall submit it to be analysed by the public analyst for the area in which the sample was, or is deemed to have been, procured.
- (2) A person, other than a sampling officer, who has purchased any food or drug may submit a sample of it to be analysed by the public analyst for the area in which the purchase was made.
- (3) The public analyst shall analyse as soon as practicable any sample sent to him in pursuance of this section, and give to the person by whom it was submitted a certificate in the prescribed form specifying the result of the analysis :
 Provided that, in the case of a sample submitted by a person not being an officer of the Food and Drugs authority, the analyst may demand in advance such fee, not exceeding one guinea, as may be fixed by that authority.
 In giving his certificate, the analyst shall have regard to the provisions of any regulation made under section twenty-three of this Act.
- (4) If the office of public analyst for the area in question is vacant, the sample shall be submitted to the public analyst for some other area and, upon payment to him of such sum as may be agreed, he shall analyse it and give to the person by whom it was submitted such a certificate as aforesaid.

It should be observed that a sampling officer is not bound to have a sample analysed by the public analyst as was the case under the repealed section of the Food and Drugs (Adulteration)

(*o*) Sect. 66, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 293 ; and see *ante*, p. 38.

(*p*) *Ibid.*, sect. 67 ; 31 Halsbury's Statutes 294.

(*q*) Cruelty to Animals Act, 1876 ; 1 Halsbury's Statutes 367.

Act, 1928(*r*), he may decide whether to submit the sample to the analyst or not. A private person, having obtained a sample of food for consumption, and thereafter deciding to submit it privately to an analyst for analysis need not comply with the provisions of section 70 of the Act of 1938 (see *ante*, p. 55), with respect to the statutory declaration (see *ante*, p. 59) or the division of the sample (see *ante*, p. 60)(*s*). In such a case, if the analysis is made by a *private* analyst, it should be noted that he must give evidence in court, as the provisions of section 81 of the Act of 1938 (see *post*, p. 172) with respect to the admissibility of certificates of analysis, do not apply to certificates given by a person who is not a public analyst.

Having received a sample from the sampling officer it is the duty of the public analyst to analyse it, and although the actual examination need not be carried out by the public analyst himself (or his deputy, see *ante*, p. 39), the work must be properly supervised(*t*). The form of analyst's certificate has been prescribed by the Minister of Health in the Public Analysts Regulations, 1939(*u*), and an appeal was allowed against a conviction on the ground that the certificate of the public analyst was not in the prescribed form(*v*). Where a sample is analysed by the Government Chemist, his certificate need not be in the prescribed form(*w*). It is not necessary for the analyst's certificate to state that the article is injurious to health(*x*). A failure to state on the certificate whether any change has taken place in the sample which might interfere with the analysis, may invalidate the certificate(*y*), but see Note 6 on the prescribed form of certificate (see *ante*, p. 41). It will be noted that under subsection (3) of section 69, *supra*, the public analyst must have regard to the provisions of any Regulations made under section 23 of the Act of 1938 (see *post*, p. 121).

SAMPLING FOR BACTERIOLOGICAL EXAMINATION.

Introduction.—In addition to the sampling of food and drugs for the purpose of chemical analysis, section 68 of the Act of 1938 (see *ante*, p. 51) empowers an authorised officer of a food and drugs authority or of a local authority, to obtain samples for *bacteriological or other examination*. As a sanitary

(*r*) Sect. 17; 8 Halsbury's Statutes 895.

(*s*) *Buckler v. Wilson*, [1896] 1 Q.B. 83; 25 Digest 73, 32.

(*t*) *Bakewell v. Davis*, [1894] 1 Q.B. 296; 25 Digest 77, 60.

(*u*) S.R. and O., 1939, No. 840; and see *ante*, p. 40.

(*v*) *Pearl v. Barstow* (1880), 44 J.P. 699; 25 Digest 103, 262.

(*w*) *Foot v. Findlay*, [1909] 1 K.B. 1; 25 Digest 115, 385.

(*x*) *Hull v. Horsnell* (1904), 68 J.P. 591.

(*y*) *Hudson v. Bridge* (1903), 67 J.P. 186; 25 Digest 90, 161.

Hunter v. Wintrup (1904), 4 Adam 471; 25 Digest 78, 71 i.

inspector and medical officer of health are by virtue of their appointments "authorised officers" for all purposes of the Act of 1938 (see *ante*, p. 33) they are automatically sampling officers within the meaning of section 68, *supra*. Consequently such officers may take samples of milk for bacteriological examination without being specially authorised by the local authority. If any other person wishes to take such samples he must be properly authorised by the local authority to do so.

Milk and certain other dairy products (*e.g.* ice-cream, cream) are frequently sampled for bacteriological examination; other foodstuffs rarely so, except in special circumstances such as an outbreak of food poisoning (see *post*, p. 322).

Milk is examined bacteriologically for the following purposes:—

- 1—detection of pathogenic organisms, *e.g.* tubercle bacilli, brucella abortus, etc.; and
- 2—ascertainment of the cleanliness or keeping quality of the milk.

In short, it determines the safety and keeping quality of milk.

The bacteriological examination of milk is undertaken by the following authorities for the purposes named:—

- | | |
|-------------------------------------|--|
| 1— <i>Local authorities</i> — | <ul style="list-style-type: none"> i—biological examination for detection of tubercle bacilli; ii—cleanliness of milk (<i>i.e.</i> keeping quality); and iii—designated milk, to secure compliance with prescribed standards—see <i>post</i>, p. 410. |
| 2— <i>Ministry of Agriculture</i> — | for keeping quality, under the National Milk Testing and Advisory Scheme—see <i>post</i> , p. 391. |

Local authorities, therefore, are primarily concerned with the bacteriological examination of milk for the detection of pathogenic organisms; the Ministry of Agriculture for the ascertainment of keeping quality(z).

TESTS APPLIED TO MILK.

The following tests are applied to milk, other than those concerned with its chemical composition, as to which see *ante*, p. 76.

- 1—Methylene blue test;
- 2—Coliform test;
- 3—Phosphatase test;
- 4—Plate count test;
- 5—Resazurin test;
- 6—Biological test for tubercle bacilli; and
- 7—Sediment test.

(z) For details of the Government's Milk Policy, see *post*, p. 360.

(1) **Methylene blue Test**—The official instructions for carrying out this test *on raw designated milk*, are as follows; as to the technique of the test as applied to heat-treated milk, see *post*, p. 446.

Ministry of Health—Memo. 139/Foods—Bacteriological Tests for Graded Milk, Jan. 1937.

Paragraphs 12 to 26.

12—The reliability of the results of the methylene blue test depends upon the strict observance of the directions given below.

Apparatus required.

13—(a) *Methylene blue*—Standard methylene blue tablets(a) must be used in carrying out the test. From these a standard solution of methylene blue is prepared in the following manner. One tablet is added to 200 ml. of cold sterile glass-distilled water in a sterile flask which is then shaken until the tablet is completely dissolved. After the tablet has dissolved the solution is made up to 800 ml. with cold sterile glass-distilled water and is stored in a cool, dark place. If the solution is to be used for longer than a week, evaporation should be prevented by closing the flask with a rubber bung.

The solution remains stable in the dark for a considerable time but no stock solution more than two months old should be used.

(b) *Test-tubes*—Test-tubes conforming to the British Standard Specification 152/16, nominal $6'' \times \frac{5}{8}''$, having an internal diameter of 13.5 ± 0.5 mm. and an etched mark indicating 10 ml. are to be used. The test-tubes are plugged with cotton-wool or, preferably, covered with closely fitting aluminium caps (23 mm. long by 17 mm. broad external diameter). They are sterilised before use in an autoclave at a pressure of 15 lbs. per square inch for 20 minutes or by exposure in a hot-air oven to a temperature of 160° C. for 2 hours. If not to be used directly after sterilisation they should be kept in closed boxes to protect them from dust.

(c) *Rubber stoppers*.—These are supplied so made as to fit the test-tubes. They should be sterilised by immersion in boiling water for 5 minutes immediately before use.

(d) *Water bath*.—A metal water bath fitted with a metal cover and containing a test-tube rack is required, in which the test-tubes containing the milk samples can be immersed. The water in the bath must be kept above the level of the milk in the test-tubes and its temperature, which must be between 37° C. and 38° C., should be maintained as nearly uniform as possible by means of a reliable automatic thermo-regulator. The interior of the bath must be completely dark.

(a) Traces of impurities normally present in methylene blue seriously affect the reliability of the test. It is essential, therefore, that only specially prepared standard methylene blue tablets should be used for this test. The names of manufacturers who supply such tablets may be obtained on application to the Ministry of Health—note, p. 3, Memo. 139/Foods (Jan., 1937).

- (e) *Pipettes*.—One ml. straight-sided blow-out delivery pipettes should be used for measuring the methylene blue solution, and these should preferably comply with the following specification :—

Overall length	300 mm.
External diameter	7.5 to 8.5 mm.
Internal diameter	2.6 to 3.0 mm.
Graduation	1 mark only at 1 ml. level
Distance of graduation from tip .. .	140 to 180 mm.
Distance of graduation from top .. .	120 to 160 mm.

The pipettes should be calibrated to deliver 1 ml. of water at 20° C. when the contents are blown out with the tip touching the side of the vessel, 3 seconds allowed for drainage, and the accumulated drop then blown out. No pipette should have an error of more than ± 2 per cent. ; that is, the amount delivered should be between 0.980 ml. and 1.020 ml.

The pipettes should be plugged with cotton-wool at the upper end, placed in a metal pipette tin or wrapped in Kraft paper and sterilised in a hot-air oven at a temperature of 160° C. for 2 hours. The same pipette may be used for adding the methylene blue solution to successive tubes ; it may conveniently be operated by a rubber teat.

If large numbers of tubes are being put up, it may be found convenient to add the methylene blue solution by means of an automatic all-glass 1 ml. delivery pipette.

Mixing of Milk in Sample Bottles prior to Examination.

- 14—(a) A sample collected in a special sampling bottle should be treated in the following way. If the bottle is filled to the level of the stopper, it should be inverted 25 times by a rapid rotatory movement of the wrist in order to mix the cream uniformly with the milk. About one-quarter of the contents of the bottle should then be poured away and the bottle shaken 25 times, each shake being an up-and-down movement with an excursion of about 1 foot, the whole shaking lasting about 12 seconds. If the bottle is not completely filled it can be shaken directly in the way just described.
- (b) A sample in a sealed bottle or carton should first of all be inverted 25 times by a rapid rotatory movement of the wrist, the cap should be removed with sterile forceps, the whole contents should be poured rapidly into a sterile capped or stoppered bottle of larger capacity, and this should then be shaken in the way described above.

Method of carrying out the Test.

- 15—Thoroughly mix the sample of milk by inverting and shaking the sample bottle as described above and then pour the milk into a test-tube up to the 10 ml. mark. In doing this the stopper or cap of the bottle should be removed with aseptic precautions, the pouring-lip of the bottle thoroughly flamed with a bunsen burner, the cotton-wool plug or the aluminium cap of the test-tube removed, the mouth of the test-tube flamed with a bunsen burner and the milk rapidly poured into the tube up to the 10 ml. mark. In pouring into the tube care should be taken to leave one side of the interior unwetted with milk. One ml. of methylene blue solution is then added

to the tube from a pipette, care being taken that the pipette does not come into contact with any of the milk in the tube or with the wetted side of the interior of the tube. If this should occur the pipette must be immediately discarded. During delivery the tip of the pipette should be held against the dry side of the tube about $\frac{1}{2}$ to 1 inch above the level of the milk and the methylene blue solution expelled by blowing with the mouth or by means of a teat on the pipette. After the lapse of 3 seconds the solution remaining in the tip of the pipette should be blown out, and the pipette withdrawn. The tube is then closed with a sterile rubber stopper held and inserted by sterile forceps or by the tips of the fingers on its extreme upper end. On no account must the fingers be allowed to come into contact with the mouth of the test-tube or with the end of the stopper which comes into contact with the test-tube. The tube is then inverted slowly once or twice, so that the whole column of contained air rises above the level of the milk, and placed within 5 minutes in the water bath.

- 16—With each batch the following control tubes should be put up : (a) 10 ml. of mixed milk(b) + 1 ml. of tap water ; (b) 10 ml. of mixed milk(b) + 1 ml. of methylene blue solution. Both control tubes (a) and (b) should be fitted with stoppers in the usual way and immersed for 3 minutes in boiling water in order to destroy the natural reducing system present in the milk. Comparison of the experimental tubes with control tube (b) will show when decolourisation is beginning and comparison with control tube (a) will show when it is complete.
- 17—The tubes must be inspected at half-hourly intervals. At these inspections (1) any tube that has reached the end point (as defined below) should be removed from the rack, (2) any tube that shows commencing decolourisation should be left until the end point is reached and (3) all other tubes should be *inverted once*.
- 18—The reduction (decolourisation) of the methylene blue is brought about by the combined action of the micro-organisms and of reducing substances that are naturally present in raw milk. Since these reducing substances are closely bound up with the fat globules, it is very important that the cream should be kept distributed as evenly as possible throughout the milk ; if it is allowed to rise and collect at the top, reduction in the main body of the milk will be delayed. It is for this reason that half-hourly inversion of the tubes must be carried out. Any departure from this practice will result in an alteration of the reduction time and consequent invalidation of the result.
- 19—The milk is to be regarded as decolourised when the whole column of milk is completely decolourised or is completely decolourised up to within 5 mm. of the surface. The test is then finished. If a trace of colour persists at the bottom of the tube and does not extend upwards for more than 5 mm. it may be ignored. The time (within the prescribed limit) at which decolourisation is observed should be recorded. Where a tube is found not to be decolourised within the prescribed time, the sample satisfies the test.

(b) The milk for the control tubes should consist of a mixture of milks, preferably from several producers, so as to have an average fat-content and colour—note, p. 5, Memo. 139/Foods (Jan., 1937).

Precautions in regard to the Test.

- 20—It is important that the methylene blue solution when not in use should be kept in the dark; it should at no time be exposed to sunlight.
- 21—The amount of methylene blue required for a day's work should be poured off from the stock bottle into a suitable glass container. On no account should the pipette used for transferring the methylene blue solution to the tubes of milk be introduced into the stock bottle. Moreover, if at any time during the filling of the tubes the methylene blue solution should become contaminated with milk carried into it by a pipette which has inadvertently come into contact with the milk, the methylene blue solution should be immediately discarded and replaced by a fresh supply.
- 22—It is essential that the interior of the water bath during the progress of the tests should be completely dark, since sunlight, diffused daylight and even artificial light catalyse the reduction of methylene blue. The tubes should not be exposed to direct sunlight during the half-hourly inspections.
- 23—The design and construction of the water bath including the thermo-regulator must be such as to ensure the maintenance of a uniform temperature of 37° C. to 38° C. during the test.
- 24—When a number of tests are being carried out it is convenient to place the test-tubes in a rack provided with a metal top to hold them in position so that at the half-hourly intervals all the test-tubes can be simultaneously inverted by merely inverting the rack.
- 25—The precautions against adventitious contamination of the milk sample described in the method for carrying out the test must be carefully observed.
- 26—The sterilisation of the rubber stoppers for the test-tubes and their subsequent satisfactory manipulation can be facilitated by employing a simple rack for holding a large number of rubber stoppers immersed in a suitable vessel of boiling water.

Where the methylene blue test is applied to heat-treated milk (see *post*, p. 447), samples should be taken on the day of retail delivery, and should consist of an unopened bottle, or, in the case of loose milk, be obtained from the container from which the milk is passed to the consumer. Samples should not be packed in ice for transport to the laboratory but should be protected from the direct rays of the sun. The sample is kept at atmospheric shade temperature both in transit and in the laboratory, until between 9 and 10 a.m. on the day following sampling(c).

(2) **Coliform Test.**—The official directions for carrying out this test are as follows, but it should be noted that in accordance with Circular 10/46 of the Ministry of Health(d), issued in connection with the Milk (Special Designations) Regulations, 1946(e), this test is not now carried out on designated milk.

(c) Circular 31/44, Ministry of Health, 3rd April, 1944.

(d) 18th January, 1946.

(e) S.R. and O., 1946, No. 10; and see *post*, p. 430.

Ministry of Health—Memo. 139/Foods—Bacteriological Tests for Graded Milk, Jan. 1937.

Paragraphs 27 to 34

27—Samples should be examined in accordance with the following directions.

Apparatus required.

28—(a) *Culture medium tubes.*—Test-tubes for holding culture medium conforming to the British Standard Specification 152/16 nominal $6'' \times \frac{5}{8}''$, having an internal diameter of 13.5 ± 0.5 mm. should be used. Each tube should contain an inverted Durham tube conforming to the British Standard Specification 35/8, nominal $1\frac{3}{8}'' \times \frac{5}{16}''$, having an internal diameter of 7 ± 0.3 mm.

(b) *Dilution tubes.*—Test-tubes for dilution conforming to the British Standard Specification 152/19, nominal $6'' \times \frac{3}{4}''$, having an internal diameter of 16.5 ± 0.6 mm. should be used in the two-stage method of dilution described below.

Both culture medium tubes and dilution tubes should be plugged with cotton-wool or preferably covered with closely fitting aluminium caps and sterilised in the way described under methylene blue test (paragraph 13(b) above—see *ante*, p. 83).

(c) *Pipettes.*—One ml. pipettes of type specified under the methylene blue test (paragraph 13(e) above—see *ante*, p. 84) should be used.

Nine ml. pipettes with the following specification should be used :—

Overall length	360 \pm 10 mm.
Length of tapered portion forming jet	25 \pm 5 ..
Distance between graduation mark and tip of jet	200 \pm 20 ..
Length of tube of smaller bore at top of pipette	50 \pm 5 ..
External diameter of pipette ..	10.5 \pm 0.6 ..
External diameter of tube of smaller bore at top of pipette	6.0 \pm 0.5 ..
Wall thickness of tube of smaller bore at top of pipette	1.0 to 1.5 ..
External diameter of jet to be at least	3 ..

The pipettes should be calibrated to deliver 9 ml. of water at 20° C., when held in the vertical position and allowed to discharge by gravity in 5 to 10 seconds, the tip being touched against the side of the vessel 3 seconds after the falling column of fluid has come approximately to rest. No pipette should have an error of more than ± 1 per cent., *i.e.* the volume of water delivered by a 9-ml. pipette should be between 8.91 and 9.09 ml.

The pipettes containing cotton-wool plugs at their upper ends should be sterilised in the way described under the methylene blue test (paragraph 13(e) above—see *ante*, p. 84).

Medium.

29—MacConkey broth made according to the following formula is to be used.

MacConkey Broth (single strength).

Commercial sodium taurocholate	..	..	5 gm.
Lactose	..	..	10 gm.
Peptone	..	..	20 gm.
Sodium chloride	..	..	5 gm.
Distilled water	..	..	1,000 ml.

Steam for 2 hours and transfer to the ice-chest overnight. Filter in the morning through Chardin paper while still cold. Adjust the reaction to pH 7.4, using phenol red as the indicator. Add about 10 ml. of 1 per cent. aqueous solution of neutral red.

Culture tubes with medium added.—Distribute the MacConkey broth medium in 5 ml. quantities into the culture medium tubes provided with Durham fermentation tubes. Plug the culture medium tubes with cotton-wool or cover with aluminium caps and sterilise in an autoclave at a pressure of 10 lbs. per square inch for 15 minutes, or in a steamer for 30 minutes on 3 successive days. The medium in the finished culture tubes should be clear and should have a claret-red colour free from yellow or magenta.

Diluent.

30—Tap water may be employed if it has been shown that it is free from any marked germicidal activity. Distilled water, if it has been distilled in glass *and not in metallic stills*, is also permissible. Preferably one-quarter strength Ringer's solution should be used.

Ringer's Solution (full strength).

Sodium chloride	..	..	9.0 gm.
Potassium chloride	..	..	0.42 gm.
Calcium chloride	..	..	0.48 gm.
Sodium bicarbonate	..	..	0.2 gm.
Distilled water	..	..	1,000 ml.

The one-quarter strength solution should be sterilised by autoclaving for 20 minutes at a pressure of 15 lbs. per square inch.

Method of carrying out the Test.

31—*Filling the dilution tubes with diluent.*—Nine ml. of sterile diluent are measured by means of a 9-ml. pipette and delivered by gravity in the way already described (paragraph 28(c) above) into each of the dilution tubes after these have been sterilised.

32—*Making the dilution.*—After the milk in the sample bottle has been thoroughly mixed as described under the methylene blue test (paragraph 14 above—see *ante*, p. 84), two successive 1/10 dilutions should be made in the sterile diluent in the dilution tubes in the following way. A sterile 1 ml. pipette should be introduced into the sample bottle of milk with its tip reaching not more than $\frac{1}{2}$ to 1 inch below the surface of the milk. The milk should be sucked up and down ten times to the 1 ml. mark and 1 ml. of milk should then be measured out, holding the pipette in a vertical position. The pipette

should be withdrawn, the tip being touched against the neck of the bottle to remove excess milk adhering to the outside; it should then be introduced into the first test-tube of the diluting series with the tip touching the side of the tube at a point about $\frac{1}{2}$ to 1 inch above the level of the diluent. It is important that the pipette should not come into contact with the diluting fluid. The milk should then be blown out, 3 seconds should be allowed to elapse for drainage, and the remaining contents blown out. The pipette should then be discarded. A fresh pipette should be introduced into the 1 in 10 dilution, with its tip reaching not more than $\frac{1}{2}$ to 1 inch below the surface of the diluent, the fluid sucked up and down ten times to the 1 ml. mark, 1 ml. measured out with the pipette in the vertical position, the pipette removed from the fluid, its tip being touched against the side of the tube about $\frac{1}{2}$ inch below the rim so as to remove any excess adhering to the outside, the pipette transferred to the second tube of the diluting series, introduced with its tip touching the side of the tube about $\frac{1}{2}$ to 1 inch above the level of the diluent, and the contents expelled in the manner described above.

- 33—*Inoculation and Incubation of the culture tubes containing MacConkey broth.*—Take a fresh 1 ml. pipette, introduce it $\frac{1}{2}$ to 1 inch below the level of fluid in the 1/100 dilution of milk, suck up and down 10 times and then transfer 1 ml. portions to each of 3 culture tubes containing MacConkey broth, using the same technique as described under making of dilutions (paragraph 32 above). Incubate the culture tubes at 37° C. for 48 hours and then examine for acid and gas production.

Standards.

- 34—The milk is regarded as satisfactory in respect of this test if two out of the three tubes are found to be free from acid plus gas after 48 hours' incubation.

(3) **Phosphatase Test.**—The following directions for carrying out this test are prescribed(*f*):—

Ministry of Health—Memo. 139/Foods—Bacteriological Tests for Graded Milk, Jan. 1937.

Addendum—March 1943.

The reliability of the results of this test depends upon the strict observance of the directions given below. A negative result indicates that the milk has been sufficiently heated to destroy all the common pathogenic organisms. Samples kept at room temperature should preferably be examined within 18 hours of having been heat treated, but may be kept longer in a cold store at 32° to 40° F. If so, they should be raised to room temperature before being tested. Samples which show a taint or clot on boiling should not be tested.

Precautions.

- (a) Phenols, disinfectants containing phenols and soap containing carbolic acid must be kept at a safe distance from the test reagents and apparatus;

(*f*) See also Kay, H.D. and Graham, W.R., *Journal Dairy Research*, vol. VI, No. 2, p. 191; and "The Phosphatase Test for Control of Efficiency of Pasteurisation," Imp. Bur. Dairy Sci., Tech. Commun. No. 1, 1939.

- (b) the use of bottle caps made from phenolic resins must be avoided ;
- (c) rubber stoppers may contain phenolic impurities and fresh batches must, therefore, be tested before use ;
- (d) all glassware must be carefully cleaned and rinsed thoroughly before use. Cleaning in chromic acid is strongly recommended ;
- (e) contamination of pipettes, etc., by saliva, which is known to contain considerable amounts of phosphatase, must be avoided ;
- (f) a fresh pipette must be used for each sample of milk in order to avoid contamination by raw or insufficiently heated milk ;
- (g) all reagents must be kept in a dark, cool place and well protected from dust ;
- (h) tests must not be carried out in direct sunlight ;
- (i) freshly boiled distilled water must be used throughout.

Reagents.

Buffer-substrate.—Dissolve 1.09 gm. of disodium phenyl phosphate and 11.54 gm. of "sodium veronal" (sodium diethyl barbiturate) in distilled water saturated with chloroform and make up to 1 litre. Alternatively, use buffer-substrate tablets(g). Either dissolve one tablet in 50 ml. of distilled water saturated with chloroform, or alternatively, add one tablet to about 45 ml. of boiling distilled water, boil the solution for exactly 1 minute, cool rapidly and make up to 50 ml. with boiled distilled water. Add a few drops of chloroform to prevent the growth of micro-organisms and keep in the refrigerator. Solutions should be discarded after 3 days.

Folin and Ciocalteu's phenol reagent (stock)(g).—Dissolve 100 gm. of sodium tungstate $\text{Na}_2\text{WO}_4 \cdot 2\text{H}_2\text{O}$ and 25 gm. of sodium molybdate, $\text{Na}_2\text{MoO}_4 \cdot 2\text{H}_2\text{O}$, in 700 ml. of water in a 1,500 ml. flask connected, preferably by a ground-glass joint, with a reflux condenser. Add 50 ml. of syrupy (85 per cent.) phosphoric acid and 100 ml. of concentrated hydrochloric acid. Reflux the mixture gently for 10 hours. (If an all-glass connection between the flask and condenser is not available, use a rubber stopper or cork wrapped in tinfoil. Take the greatest care that the solution does not come in contact with the tinfoil.) After 10 hours, cool, add 150 gm. of pure lithium sulphate, 50 ml. of water and a few drops (usually 4–6) of liquid bromine, and leave for 2 hours. Then boil the mixture under the hood without the condenser for 15 minutes to get rid of excess bromine. Cool, dilute to 1 litre and filter. The finished reagent should have a golden yellow colour with no greenish tint. Any reagent with a greenish tint should be rejected. Keep in a refrigerator and protected from contact with dust, metal, etc., and any reducing substance. The reagent is usually quite stable for at least 4 months.

Sodium-hexametaphosphate(g).—Use the salt in the form of flakes and sift in order to remove any white powder which has formed during storage. Always keep in a tightly stoppered bottle. Prepare a 5 per cent. solution (weight per volume) by dissolving in warm water and making up to volume after cooling.

(g) It is essential that only specially prepared standard reagents or tablets be used for the test. The names of manufacturers who supply such reagents or tablets may be obtained on application to the Ministry of Health, Division IIIH.

Test reagent.—Add 1 volume of the stock solution of Folin and Ciocalteu's reagent to 2 volumes of the hexametaphosphate solution. The mixture is stable for several weeks.

Sodium carbonate.—Make up a 14 per cent. solution (weight per volume) of pure anhydrous sodium carbonate. It is advisable to standardise this solution by titration.

Apparatus.

- (a) A water bath or incubator maintained at $37 \pm 1^\circ \text{C.}$;
- (b) a graduated pipette or an automatic burette to deliver 4.5 ml. The latter should be made from dark glass or should be painted a dark colour ;
- (c) a number of grade A 1.0 ml. straight-sided pipettes, accurately marked at 0.5 and 1.0 ml. These should be plugged with cotton-wool ;
- (d) a number of test-tubes conforming to British Standard Specification No. 625 (1935) 152/16, accurately marked at 10 ml., with rubber stoppers to fit. Before use these test-tubes should be cleaned in chromic acid(*h*) ;
- (e) a number of filter funnels, 5 cm. diameter ;
- (f) Whatman filter papers, 9 cm. No. 40 ;
- (g) either a Lovibond comparator with cell marked at 25 mm. and with disc containing standard coloured glasses corresponding to 0.5, 1.5, 2.3 and 6.0 Lovibond blue units ; or a Lovibond tintometer with 13 mm. cell.

Determination.

Tests should always be carried out in duplicate. To 10 ml. of the buffer-substrate solution contained in a test-tube, add 0.5 ml. of the well-mixed milk. Add 3 drops of chloroform, stopper the tube, mix the contents and incubate at $37 \pm 1^\circ \text{C.}$ for 24 ± 2 hours. At the end of this time, cool, add 4.5 ml. of the test reagent(*i*), mix, allow to stand for 3 minutes and filter into a test-tube marked at 10 ml. To 10 ml. of the filtrate add 2 ml. of the sodium carbonate solution, mix and place test-tube for exactly 2 minutes in boiling water (kept boiling). Cool and proceed to read the colour thus developed, using either the comparator or the tintometer.

Control Tests.

Keep all milk samples in the refrigerator for 24 hours after the duplicate experimental tubes have been put into the incubator. *After completing the test proper* carry out control tests on those samples which have given a positive phosphatase reaction.

Proceed as follows : mix thoroughly 10 ml. of the buffer-substrate solution with 4.5 ml. of the test reagent, add 0.5 ml. of milk and mix. Allow to stand for 3 minutes, and filter into a test-tube marked at 10 ml. To 10 ml. of the filtrate add 2 ml. of the sodium carbonate solution, mix and place the tube for exactly 2 minutes in a boiling-water bath (kept boiling).

(*h*) Chromic acid may be prepared as follows : Dissolve 90 gm. of powdered potassium bichromate in 200 ml. of hot water contained in a 4-litre conical flask. Cool and add 2 litres of commercial sulphuric acid (90 per cent. or more). Stir until the precipitate has dissolved. Keep the solution covered and discard when it becomes green.

(*i*) If an automatic burette is being used for delivery of the test reagent, and has stood full of the reagent for more than 24 hours, the first two emptyings of the burette should be discarded.

Cool and proceed to read the colour thus developed. The colour should not exceed 1.5 Lovibond blue units(*k*).

Interpretation.

Milks which give readings of 2.3 Lovibond blue units or less should be classified as "giving a negative phosphatase test" or as "sufficiently heat treated," those giving readings between 2.4 and 6.0 Lovibond blue units as "insufficiently heat treated," whilst those giving readings greater than 6.0 Lovibond blue units should be reported as "grossly under-heated." Raw milk gives more than 30 Lovibond blue units. If a positive phosphatase test—*i.e.* a reading of more than 2.3 Lovibond blue units—is obtained it is not possible on the basis of this finding alone to decide whether the cause is too low a temperature or too short a holding time, or the addition of raw milk.

The revised technique for officially designated "Pasteurised" and "Tuberculin Tested Milk (Pasteurised)" is contained in the Milk (Special Designations) Regulations, 1946(*l*), as to which see *post*, p. 446.

(4) **Plate count Test.**—The official directions for carrying out this test are as follows:—

Ministry of Health—Memo. 139/Foods—Bacteriological Tests for Graded Milk—Jan. 1937.

Paragraphs 35 to 45.

35—Samples should be examined for their bacterial content per 1 ml. in terms of numbers of bacterial colonies developing when measured quantities are mixed with nutrient agar and incubated in accordance with the following directions.

Apparatus required.

- 36—(1) *Dilution tubes*—as for the coliform test (paragraph 28(b) above—see *ante*, p. 87) ;
 (2) *Pipettes*—1 ml. and 9 ml. pipettes as for the coliform test (paragraphs 13(e) and 28(c) above—see *ante*, pp. 84, 87) ;
 (3) *Petri dishes*—British Standard Specification No. 611, 1935.
 (4) *Test-tubes*—as for the methylene blue test (paragraph 13(b) above—see *ante*, p. 83) ;
 (5) *Water-jacketed incubator* at 37° C.

Diluent required.

37—As for the coliform test (paragraph 30 above—see *ante*, p. 88).

Culture medium required.

38—Yeastrel (manufactured by Brewers' Food Supply Co. Ltd., Edinburgh)	..	..	..	..	3 gm.
B.D.H. or equivalent Peptone	..	..	..	..	5 gm.
Washed shredded agar	..	..	..	..	15 gm.
Fresh whole milk	..	..	..	..	10 ml.
Distilled water	..	..	..	..	1,000 ml.

(*k*) A control value of over 1.5 Lovibond blue units is rare, but indicates *either* the presence of phenolic substances (or of other adventitious contamination) in the milk *or* faulty reagents *or* faulty technique. If it occurs in two or more different samples of milk examined at the same time, a control value of over 1.5 units is almost certainly due to faulty reagents or technique.

(*l*) S.R. and O., 1946, No. 10.

Dissolve the Yeastrel and peptone in distilled water in the steamer and adjust the reaction at room temperature to pH 7.4, using phenol red as the indicator. Wrap the shredded agar in muslin and wash in running cold water for 15 minutes. Squeeze out the excess water and add the agar together with the freshly shaken milk to the broth. Autoclave at a pressure of 15 lbs. per square inch for 20 minutes, and filter through paper pulp in a Buchner funnel. Egg must not be used for clearing. The pulp is prepared by mashing up small pieces of "Postlip" or "White Heather" paper in water by means of a pestle and mortar. A single layer of Chardin filter paper should be laid on top of the Buchner funnel to prevent the pulp being sucked through, and the pulp itself should then be packed down evenly on top of it. The funnel should be inserted into an Erlenmeyer filtration flask fitted with a side piece. A filter pump should be applied to such through the excess water, which should be poured off through the side piece. The filter, when ready for use, should have a total depth of about 1.5 mm. A pulp layer of suitable and approximately the same depth for any size of funnel may be obtained by pulping an area of dry "Postlip" filter paper equal to four times the square of the diameter of the funnel. With "White Heather" brand, 1 gm. of the dry paper is required for every 20 sq. cm. of funnel. Thus for a 25 cm. diameter funnel, 25 gm. of paper are required; for a 12.5 cm. funnel, 6 gm., and so on. The agar is taken directly from the autoclave and filtered hot, the whole apparatus being kept warm by a surrounding atmosphere of steam. The reaction of the filtrate is tested at 50° C. and adjusted, if necessary, to pH 7.0. The medium is tubed in 10 ml. quantities and autoclaved at a pressure of 15 lbs. per square inch for 20 minutes. The final reaction of the medium at *room temperature* should be pH 7.2.

Dilutions.

39—Dilutions of 1/10, 1/100 and 1/1000 of the milk sample, which has previously been thoroughly mixed in the way described for the methylene blue test (paragraph 14 above—see *ante*, p. 84), are to be made in the manner and with the diluent described for the coliform test (paragraphs 30, 31 and 32 above—see *ante*, p. 88) except that an additional dilution, the 1/1000 dilution, is to be made from the 1/100 dilution.

Plating.

40—A fresh sterile 1 ml. delivery pipette should be introduced into the tube containing the highest dilution, with its tip not more than $\frac{1}{2}$ to 1 inch below the level of the fluid. The fluid should be sucked up and down ten times, the contents discharged completely, a fresh 1 ml. quantity measured out, the pipette withdrawn, the tip touched against the side of the tube about $\frac{1}{2}$ inch below the rim so as to remove any excess adhering to the outside, the contents blown out gently into the centre of a sterile Petri dish, the tip of the pipette being held about $\frac{1}{2}$ inch above the level of the glass. 3 seconds allowed to elapse, the tip of the pipette touched against the dish at a point some distance from the fluid already delivered, and the last drop blown out. The same pipette may be used

for each dilution, provided the plates are inoculated in order from the highest to the lowest dilution. It is sufficient to suck the fluid up and down 3 times in each dilution before measuring out the 1 ml. quantities for plating, except for the highest dilution which requires to be sucked up and down 10 times for mixing purposes.

- 41—An alternative method which is somewhat quicker, is to inoculate the plates at the same time as the dilutions are made. After the 1 ml. quantity has been taken over to the next tube of diluent, the pipette may be used for inoculating the Petri dish corresponding to the dilution in which it has been washed out.
- 42—A sufficient number of tubes containing 10 ml. of standard milk agar are boiled up and cooled down to 45° C. The contents of one tube are delivered under sterile conditions into each Petri dish. Immediately the medium is delivered, mixing should be performed by a combination of rapid to-and-fro shaking and circular movements lasting 5 to 10 seconds, the plate being kept flat on the bench throughout the whole process. The exact procedure consists in 5 to-and-fro movements followed by 5 circular movements in a clockwise direction, succeeded by 5 to-and-fro movements at right angles to the first set followed by 5 circular movements in an anti-clockwise direction. After mixing, the plates should be allowed to stand for about an hour before being transferred to the incubator.
- 43—The time elapsing between the preparation of the dilutions and the pouring of the plates should not exceed 15 minutes.
- 44—The plates should be incubated bottom upwards for 2 days at 37° C. Water-jacketed incubators, preferably gas-heated, should be used, and the temperature in various parts of the incubator should be subject to frequent control. The plates may be piled in stacks, but unless a cellular incubator is used it is probably better not to make any stack more than 6 plates high. The incubator should be opened as little as possible during the two days.
- 45—A plate with more than 500 colonies should not be counted unless the plate made with the next higher dilution shows less than 30 colonies. If the plate made with the 1/1000 dilution contains more than 500 colonies it may be inferred that there are more than 500,000 colonies per 1 ml. of milk. A plate with less than 30 colonies should not be counted unless it is made with the 1/10 dilution, in which case it may be inferred that there are 10 times the number of observed colonies per 1 ml. of milk. Plates should be counted within 4 hours of removal from the incubator. The best method of counting is with a specially constructed box allowing of examination of the plates by combined reflected and transmitted artificial light against a dark background with a hand magnifying glass of 4 inches focal length magnifying 2½ diameters(*m*).

(*m*) Suitable boxes have been described by Mattick and Hiscox, *Journal of Scientific Instruments*, 1933, vol. 10, p. 373, and by Wilson *et al.* in the Medical Research Council's Special Report Series, No. 206, p. 102.

(5) **Resazurin Test.**—The official technique for this test, as laid down by the Ministry of Agriculture, is as follows:—

(a) **Ten-Minute Resazurin Test (provisional technique)(n).**

Preparation of Resazurin Solution.

Glass-distilled water should be used if possible. Tap water or water from block-tin condensers may be used if it has been shown to give the same results as glass-distilled water. The water must be sterilised by one of the following methods:—

- (i) Autoclave at 120° C. for 15 minutes.
- (ii) Steam sterilise for 1 hour at 100° C., or
- (iii) Boil for 30 minutes.

When the water is cool, measure 50 ml. into a clean sterile measure, *e.g.* a 1-inch boiling tube, flask or bottle marked at the 50 ml. level. Add one resazurin tablet and shake to dissolve. This gives a 0·005 per cent. bench solution. Alternatively, where approved by the Advisory Bacteriologist, 0·05 per cent. stock solution may be diluted with sterile distilled water to produce the 0·005 per cent. bench solution. A fresh batch of bench solution *must* be prepared for each day's testing.

The resazurin must conform to the standards laid down (see Appendix D). Representative tablets from each batch shall be submitted by the manufacturers to the Director, National Institute for Research in Dairying, Shinfield, near Reading, for examination.

Method of Testing.

The test must be started as soon as possible after a group of samples have been taken, within half an hour of arrival at the creamery, and in any case within 30 minutes of sampling. A group will normally be the suspect samples from one lorry load. Place the tubes in numerical order, from left to right, in a rack. Remove the stopper from the first test-tube in the rack, proceeding from left to right, with the thumb and fingers of the left hand, taking care not to touch the mouth of the tube. Measure 1 ml. of the resazurin solution with a sterile pipette, insert the pipette about half an inch into the mouth of the tube and expel the solution by blowing. Replace the stopper, mix by inverting the tube twice in 4 seconds and return to the rack. When resazurin has been *added to a batch of not more than 5 tubes* place immediately in the water bath and note the time.

Notes—

- (a) The delivery jet of the pipette must not touch the milk in the tube. Any pipette becoming contaminated must be immediately discarded.
- (b) Use a fresh sterile pipette for every group of samples.

Incubation of Samples.

The temperature of the water bath is maintained at 37·5° C. plus or minus 0·5° C. At the end of 10 minutes plus or minus 30 seconds, remove the tubes from the water bath and immediately match the colour with the resazurin disc in the comparator recording the tubes in numerical order.

(n) Ministry of Agriculture and Fisheries, Form. No. C150/TPY.

Examination of Tubes.

Place a control tube of mixed milk without dye in the left section of the comparator and the incubated tube in the right section. The comparator should face a good source of light (not direct sunlight) and preferably a north window. The comparator and stand are placed on a bench at such a height that the operator is able to look down on the two apertures. The disc is then revolved until the sample is matched and the disc reading noted. When the colour falls between two disc numbers, it shall be recorded as the half value, *e.g.* a reading between 3 and 4 shall be recorded as $3\frac{1}{2}$. Tubes giving a reading between 0 and 1—streaky pink or very pale pink—are recorded as $\frac{1}{2}$.

Note—An approved artificial daylight source of illumination should be used if it is impossible to use daylight.

General Precautions.

- (i) All testers must be examined by the Advisory Bacteriologist or his representative for ability to match the colours in the comparator.
- (ii) The control and experimental test-tubes should be of the same type and thickness of glass.
- (iii) Special control samples must be used for highly pigmented milk (*e.g.* Guernsey milk).
- (iv) Resazurin solution, milk and milk to which resazurin has been added, must not be exposed to direct sunlight in the laboratory.
- (v) The level of the water in the bath must be maintained above the level of the milk in the tubes.
- (vi) The water bath must be kept covered during the test.
- (vii) The temperature of the water bath must be checked before commencing each batch of tests.
- (viii) Baths must be cleaned out and fresh water added at least once a week, and the racks scrubbed.

*Standards for Resazurin and Resazurin Tablets.**Resazurin.*

The following standards have been provisionally adopted for the commercial product known as "resazurin":—

- (i) It must contain sodium resazurate equivalent to 60 ± 3 per cent. free resazurin.
- (ii) No other dye stuff (apart from traces of sodium resorufate) shall be present.
- (iii) The residue shall consist of sodium carbonate.
- (iv) It must give a colourless water-clear solution on reduction in alkaline solution.
- (v) It must give, at a concentration of 1 in 200,000, in fresh normal mixed Shorthorn milk of 3–4 per cent. fat, a tintometer disc reading of not less than 6.
- (vi) The material must behave similarly to a standard preparation maintained at the National Institute for Research in Dairying.

Resazurin Tablets.

Tablets when dissolved according to instructions shall give a 0.005 per cent. ± 0.0005 per cent. solution of "resazurin" having the above-named properties. Tablets must not contain any substance other than "resazurin" and lactose and must not give a plate count on Yeastrel agar at 37° C. of more than 500 colonies per tablet.

(b) **Routine Resazurin Test (provisional technique)(o).**

TREATMENT OF SAMPLES.

STORAGE.

The milk may be transferred to sterile 6" × $\frac{5}{8}$ " test-tubes at any time prior to testing, provided that the prescribed temperature conditions are observed. All times used will be B.B.C. times.

P.M. and Mixed (EMX) Milk.—Samples will be kept at atmospheric shade temperature from the time of sampling until 4 p.m. on the day following production of the p.m. milk. Any samples which are not tested at 4 p.m. must be cooled by holding for 15 minutes in water not above 40° F. and then placed in a cold store or refrigerator at a temperature of 32°–40° F. until 9 a.m. the following morning and then tested immediately. Testing of p.m. and mixed (EMX) milk should be carried out at 4 p.m. whenever possible.

A.M. and Mixed (MEX) Milk.—Samples will be held at atmospheric shade temperature until 9 a.m. on the day following production and then tested.

Atmospheric Shade Temperature.—This is defined as the temperature in an approved well-ventilated box or cupboard on the outside wall on the north side of a building, so that it is at all times in the shade. The bottom of the box or cupboard should be not less than 3 feet from the ground. An approved maximum and minimum thermometer must be kept in this box or cupboard. The error of this thermometer must not exceed $\pm 1^\circ$ F. The minimum temperature read at 9 a.m. and the maximum temperature read at 4 p.m. are recorded daily in a log book. Both styles must be reset at 9 a.m. and 4 p.m. For a.m. samples tested at 9 a.m. on the day following production take the arithmetic mean of the maximum temperature read at 4 p.m. on the previous day (*i.e.* the day of production) and the minimum temperature read at 9 a.m. on the day of testing. For p.m. samples tested at 4 p.m. on the day after production or at 9 a.m. on the following day take the arithmetic mean of the minimum temperature recorded at 9 a.m. and the maximum temperature recorded at 4 p.m. both on the day after production. The following table gives the possible times of testing and the two temperature readings to be used for various classes of samples:—

Meal.	Time of Testing.	Temperature readings.
<i>Evening Milk (E)</i>	(a) 4 p.m. day following date of production.	9 a.m. minimum and 4 p.m. maximum on day following date of production.
Ditto	or (b) refrigerated at 4 p.m. on day following production until 9 a.m. next day.	Ditto
<i>Morning Milk (M)</i>	9 a.m. day following date of production.	4 p.m. maximum on date of production and 9 a.m. minimum on day following date of production.

(o) Ministry of Agriculture and Fisheries, Form No. C158/TPY.

Meal.	Time of Testing.	Temperature readings.
<i>Mixed Milk</i> in which the evening milk is the older (EMX).	(a) 4 p.m. day following date when <i>evening</i> milk was produced. (b) or refrigerated at 4 p.m. until 9 a.m. following day.	9 a.m. minimum and 4 p.m. maximum on day following date when <i>evening</i> milk was produced. Ditto
<i>Mixed Milk</i> in which morning milk is the older (MEX).	9 a.m. day following day of production.	4 p.m. maximum on day of production and 9 a.m. minimum on day following production.

Should samples freeze during storage they must be placed in water at 18° C. for not more than 30 minutes immediately before testing.

Mixing the Sample.

The container is shaken 25 times, each shake being an up and down movement with an excursion of about 1 foot, the whole shaking lasting about 12 seconds. A sample in a milk bottle or carton should be inverted 25 times by rapid rotary movement of the wrist.

Transferring the Samples to Test-tubes.

After mixing, the milk is poured into a test-tube (6" × $\frac{5}{8}$ ") etched at 10 ml. mark—B.S.S. 625-1935. In doing this the stopper or cap of the bottle must be removed with aseptic precautions, the pouring lip of the bottle flamed, the test-tube stopper removed, the mouth of the test-tube flamed and the milk poured into the sterile test-tube up to the 10 ml. mark. If the transfer to test-tubes has been made more than 3 hours before testing the test-tubes containing the milk must be shaken immediately before testing as described above.

TESTING.

PREPARATION OF RESAZURIN SOLUTION.

Glass-distilled water should be used if possible. Tap water or distilled water from block-tin condensers may be used if it has been shown to give the same results as glass-distilled water. The water must be sterilised by one of the following methods :—

- (i) Autoclave at 120° C. for 15 minutes. (Preferable.)
- (ii) Steam sterilise for 1 hour at 100° C.
- (iii) Boil for 30 minutes.

Methods (ii) and (iii) must be carried out within 24 hours of using the water.

Add one resazurin tablet (see Appendix A) to 50 ml. cold sterile glass-distilled water in a clean sterile measure (a 1-inch boiling tube, flask or bottle marked at the 50 ml. level) by allowing the tablet to fall from the container or by withdrawal with sterile forceps. When completely dissolved and mixed this gives a 0.005 per cent. bench solution. Alternatively where approved by the Advisory Bacteriologist, 0.05 per cent. stock solution

may be diluted with sterile water to produce the 0.005 per cent. bench solution. The bench resazurin solution must not be used if more than 8 hours old, and when not actually being used must be kept, with aseptic precautions, in a cool, dark place.

METHOD OF TESTING.

Place the tubes in numerical order, from left to right in a rack. Measure 1 ml. of the bench resazurin solution with a sterile pipette. Remove the stopper from the first test-tube in the rack, taking care not to touch the mouth of the tube. Insert the pipette about $\frac{1}{2}$ inch into the mouth of the tube and expel the solution by blowing, taking care that the tip of the pipette does not touch the test-tube. Replace the stopper, mix by inverting the tube twice in 4 seconds and return to the rack. When resazurin has been added to a batch of not more than 10 tubes, place immediately in the water bath and note the time.

Notes—

- (a) Full aseptic precautions must be observed in these operations.
- (b) Any pipette becoming contaminated with milk or otherwise must be discarded immediately.
- (c) If the bench resazurin solution becomes contaminated with milk it must be discarded immediately.
- (d) Use a fresh sterile pipette for every batch of ten samples.
- (e) See also General Precautions.

INCUBATION OF SAMPLES.

The temperature of the water bath must be maintained at 37.5 ± 0.5 C. Tubes must be held in the bath for the time prescribed (see *post*, p. 101) plus or minus 1 minute. Tubes incubated for 90 minutes and 120 minutes must be inverted at 1 hour.

EXAMINATION OF TUBES.

At the end of the incubation time remove and examine each tube. Any tube showing complete reduction, *i.e.* white, is recorded as 0. Any tube showing an extremely pale pink, pink and white mottling or a deeper pink band at the top above a paler pink below is recorded as $\frac{1}{2}$. Other tubes are inverted and immediately matched in the comparator as follows:—

Place a "blank" tube of mixed milk without dye in the left section of the comparator and the incubated tube in the right section. The comparator must face a good source of daylight, if possible a north window. Direct sunlight must not be allowed to fall on the comparator or tubes during matching. The comparator and stand are placed on a bench at such a height that the operator is able to look down on the two apertures. The disc is then revolved until the sample is matched and the disc reading noted. When the colour falls between two disc numbers, it must be recorded as the half value, *e.g.* a reading between 3 and 4 is recorded as $3\frac{1}{2}$. Readings must be recorded immediately, tube by tube.

Note—An approved artificial daylight source of illumination may be used in the absence of satisfactory daylight.

GENERAL PRECAUTIONS.

- (i) All testers must be examined by the Advisory Bacteriologist or his representative for ability to match the colours used in the comparator.

- (ii) An initial reading immediately after adding resazurin to good quality low-count milk should give a disc number of not less than 6, otherwise the resazurin solution is faulty and must be discarded.
- (iii) Test-tubes used in the comparator should be of the same colour and thickness of glass.
- (iv) Appropriate "blank" samples must be used for highly pigmented milk (*e.g.* Guernsey milk).
- (v) Resazurin solution, milk and milk to which resazurin has been added must not be exposed to direct sunlight.
- (vi) The level of the water in the bath must be maintained above the level of the milk in the tubes.
- (vii) The water bath must be kept covered during the test.
- (viii) The temperature of the water bath must be checked before commencing each batch of tests.
- (ix) Baths must be cleaned out, the racks scrubbed and fresh water added at least once a week.

WASHING AND STERILISATION OF EQUIPMENT AND GLASSWARE.

WASHING GLASSWARE.

Immediately after use, rinse all glassware in cold or warm water (not above 120° F.). Brush in hot detergent solution and rinse thoroughly in at least three changes of cold water. Allow stoppers, pipettes and tubes to drain.

STERILISATION OF GLASSWARE AND DIPPERS.

All glassware must and dippers may be sterilised by one of the following methods, of which the first two are preferable :—

- (i) Hot-air oven—2 hours at 160°–170° C. Allow to cool before opening the door of the oven.
- (ii) Autoclave—15 minutes at 120° C. (15 lbs. pressure—or 1 atmosphere.)
- (iii) Steam sterilise—1 hour at 100° C. (Temporary expedient only.) Use within 24 hours.

Apparatus must not be sterilised in closed metal containers by methods (ii) and (iii).

Unplugged tubes must be placed upside down in the wire basket used as a container. The pipettes may be placed in a pipette case for sterilisation in the hot-air oven, a layer of glass-wool (not cotton-wool), being placed at the bottom to avoid damaging the pipette tips.

STERILISATION OF STOPPERS.

- (a) *When testing is carried out immediately.*—Sterilise the stoppers in boiling water for 10 minutes. A shallow water bath fitted with a perforated tray to take 30 to 50 stoppers may be used. Allow the test-tubes and stoppers to cool and drain after sterilisation, then insert the stoppers into the test-tubes immediately after removal from the steriliser so as to avoid risk of contamination of the mouth of the test-tube or of the narrow end of the stopper.
- (b) *When the sample is to be stored in bottle or test-tube.*—Rubber stoppers, press caps and screw caps for these containers shall be sterilised either by autoclaving as above, or by steaming as above, or by immersion in boiling water for 30 minutes.

In all cases stoppers must be inserted aseptically into the sterile bottle or test-tube within 6 hours of sterilisation.

Note—Rubber liners from press caps and screw caps must be removed from the caps and thoroughly washed after use. They are replaced in the caps prior to sterilisation. Liners made from any other material (cork, black composition material or cardboard) must not be used more than once unless autoclaved. Liners must be inspected, and discarded at the first sign of deterioration.

TEMPERATURE COMPENSATION SCALE AND INTERPRETATION OF RESULTS.

TIME OF INCUBATION.

The period of incubation will be as follows :—

<i>Mean of maximum and minimum shade temperatures.</i>						<i>Period of incubation at 37.5 ± 0.5° C.</i>
40° F. and under	..	..	..	..	..	120 mins.
Over 40° F. and up to and including 50° F.	..	..	..	..	..	90 "
" 50° F.	"	"	"	55° F.	..	60 "
" 55° F.	"	"	"	60° F.	..	30 "
" 60° F.	..	..	..	..	..	15 "

Official reporting of Category C milk to W.A.E.C.'s and farmers will *not* be made when the mean atmospheric shade temperature for the 24 hours following production is *above* 65° F. (see *ante*, p. 97).

INTERPRETATION OF RESULTS.

Milk will be graded as follows :—

<i>Disc reading after prescribed period of incubation.</i>						<i>Category.</i>	<i>Keeping Quality.</i>
4 and over	..	..	..	..	..	A	Satisfactory
3½ to 1 (both inclusive)	..	..	..	..	..	B	Doubtful
½ or 0	..	..	..	..	..	C	Unsatisfactory

APPENDIX A

STANDARDS FOR RESAZURIN AND RESAZURIN TABLETS.

Resazurin powder and resazurin tablets must be from an approved source. A list of approved sources can be obtained from the National Institute for Research in Dairying, Shinfield, near Reading.

All resazurin and resazurin tablets used in the Scheme must bear a label showing the following particulars :—

- (i) Name of manufacturer.
- (ii) The words " this batch of resazurin powder (or tablets) has been tested and approved by the National Institute for Research in Dairying on behalf of the Ministry of Agriculture."

RESAZURIN.

The following standards have been provisionally adopted for the commercial product known as "resazurin":—

- (i) It must contain sodium resazurate equivalent to 60 ± 3 per cent. free resazurin.
- (ii) No other dye stuff (apart from traces of sodium resorufate) shall be present.
- (iii) The residue shall consist only of sodium carbonate and/or sodium acetate and moisture.
- (iv) It must give a colourless water-clear solution on reduction in alkaline solution.
- (v) It must give, at a concentration of 1 in 220,000, in fresh normal mixed Shorthorn milk of 3·4 per cent. fat, a tintometer disc reading of not less than 6.
- (vi) The material must behave similarly to standard preparations maintained at the National Institute for Research in Dairying.

RESAZURIN TABLETS.

Tablets when dissolved according to instructions shall give a 0·005 per cent. $\pm 0\cdot0005$ per cent. solution of resazurin having the above properties. Tablets must not contain any substance other than resazurin, lactose and/or sodium chloride and the 0·005 per cent. solution prepared from the tablet must not give a plate count on Yeastrel agar at 37° C. (Memo. 139/Foods, Ministry of Health, London) of more than 10 colonies per ml. Three plates are poured and the mean count taken.

(6) **Biological Test for tubercle bacilli.**—There are no official instructions for carrying out this test. Briefly, it consists in injecting into each of two guinea-pigs, 1·5 ml. of the deposit obtained from centrifuging 100 ml. of the sample of milk. The guinea-pigs are kept for a period of 6 weeks, being examined at weekly intervals. If, during this period, there is any clinical evidence of tuberculosis, the animal is killed and a post-mortem examination carried out. If not, the first guinea-pig is killed at the end of 6 weeks and a detailed post-mortem examination carried out. If there is no evidence of tuberculosis the remaining guinea-pig is kept for a further 2 weeks, when it is killed and examined(*p*).

(7) **Sediment Test.**—This is not a laboratory test. It is used in the field to demonstrate to farmers and farm workers visible dirt in milk. The test is carried out by pumping a quantity of milk through a filter disc, the visible dirt being retained on the filter disc and can be demonstrated to the farmer and his staff. The two chief types of sediment tester are the "Minit," manufactured by Sutherland Thomson & Co., and the "Tustman," manufactured by Llewellyns & James, Ltd. It must be emphasised that this test is merely a method

(*p*) For further details of this test, see "*Milk: Production and Control*," Harvey and Hill (1936), London, H. K. Lewis & Co., Ltd., p. 402.

of demonstrating the presence of visible dirt in milk. It is in no sense a bacteriological test. It may, however, be of considerable use to the sanitary officer when engaged on advisory work on the farm, as a means of supplementing the official tests, previously referred to, which are not always easily understood by farmers.

PROCEDURE IN REGARD TO SAMPLING FOR BACTERIOLOGICAL EXAMINATION.

The collection of samples for bacteriological examination is by no means so simple a matter as might appear at first sight. The problem was considered at some length by Wilson *et al.* in 1935(*q*), who pointed out that widely differing plate counts may be obtained with successive samples taken from different levels in a churn of milk. They quoted Keith and Walters(*r*), who, by means of a special pipette, withdrew samples from a churn at intervals of 6 inches from each other and obtained plate counts for these samples from below upwards of 180,000, 215,000, 350,000 and 2,360,000 per ml.

Samples of milk for bacteriological examination may be taken from—

- (1) Single sealed bottles ;
- (2) Churns ; or
- (3) Tanks.

Sampling of bottled milk.—It is the invariable rule to take an entire bottle, which is forwarded to the laboratory without the cap being disturbed. The requirements of the Ministry of Health with regard to the conveyance of samples of graded milk to the laboratory are as follows:—

Ministry of Health—Memo. 139/Foods—Bacteriological Tests for Graded Milk—Jan. 1937.

Paragraphs 2 to 5.

Collection of samples.

- 2—If the milk is in sealed bottles or cartons the sample should consist of one such bottle or carton, taken anywhere between the place of bottling and the consumer, and delivered intact to the laboratory for testing. Samples of other milk should be collected in sterile glass bottles of 2 fluid ounces capacity, provided with sterile caps or stoppers. Bottles should be filled as full as is practicable so as to permit the least possible amount of air to remain in them.

(*q*) Wilson, G. S. *et al.*, "*The Bacteriological Grading of Milk*," 1935, Medical Research Council Special Report Series, No. 206, H.M.S.O., pp. 17 *et seq.*

(*r*) Keith, T. S., and Walters, H. W. (1932), *Milk Ind.*, 12, 61.

- 3—A convenient type of bottle in which to collect samples is one with a wide mouth having a screw thread on the outside of the neck, on to which fits a metal screw cap provided with an inner lining of rubber, or other suitable material which will withstand sterilisation by steam under pressure.

Sampling from churns.

- 4—When collecting samples from churns it is important to ensure that a sample as nearly as possible representative of the whole content of the churn is obtained. The milk in the churn should be well mixed by means of a plunger, consisting of a perforated metal disc with a long metal rod as a handle. The plunger is inserted into the churn and plunged up and down in the milk at least ten times. A sample is then removed with a sterile dipper and delivered into a sterile sample bottle. The dipper should have a pouring lip and should be provided with a hooked handle to loop over the finger of one hand whilst the lid of the churn is removed with the other. Two or three plungers should be provided so that when one is in use the others can be sterilised in a vessel of boiling water. Dippers are best sterilised by hot air at 160° C. for 2 hours in a hot-air oven. They can be conveniently packed and sterilised in a suitable metal container and a separate dipper should be used for each sample taken.

- 5—The time, date and place of taking each sample should be marked on the bottle containing it.

Samples of "Pasteurised" and "Tuberculin Tested Milk (Pasteurised)" milk should be conveyed to the laboratory without being packed in ice, but should be kept at atmospheric shade temperature and protected from the direct rays of the sun(s).

SAMPLING OF CHURN MILK.—As to the requirements of the Ministry of Health in regard to graded milk, see *supra*.

Samples from churns may be taken in a number of ways—

- 1—By the use of a sterile dipper, the sample may be taken from the weighing tank after the contents of the churn or churns have been tipped into it and thoroughly mixed. The objection to this method is the difficulty of cleaning and sterilising the weighing tank after use ;
- 2—A milk " thief " (long tube, preferably of aluminium, open at each end and capable of reaching to the bottom of the churn) may be used, with which a column of milk may be removed from the churn and placed in a sterile bottle. The object is to overcome the difficulty occasioned by variations in bacterial content at different levels in the churn. A number of " thieves " are required and provision must be made for sterilisation after use ; and
- 3—The milk in the churn is mixed thoroughly by means of a sterile plunger which is moved up and down in the milk at least 10 times to secure a proper mixing of the milk. A number of plungers are required and facilities for sterilisation must be available. This is the most reliable of the three methods(*1*).

(s) Circular 10/46, Ministry of Health, 18th January, 1946.

(t) Wilson, *et al.*, *op. cit.* (see note (q), p. 103, *ante*), p. 19.

The provisional technique for the sampling of milk for examination under the National Milk Testing and Advisory Scheme (see *post*, p. 391) is as follows :—

(a) **Ten-Minute Resazurin Test (provisional technique)(u).**

SAMPLING.

Sampling dippers.

Long-handled dippers will be used for sampling. The cup of the dipper will have a capacity of about 4 ozs. and the handle will be approximately 15 inches long. At least three will be required for each sampler. After sampling a churn of milk, the dipper shall be first rinsed in clean cold water and then sterilised by immersion in water (at not less than 180° F.) up to within 3 inches of the hooked end of the handle, for not less than 30 seconds. Both the cold and boiling water must be changed at frequent intervals during sampling.

Taking the sample.

The samples may be taken into sterile containers or direct into the 6" × $\frac{5}{8}$ " test-tubes used for the resazurin test. After removing the lid of the churn to be sampled, a test-tube is taken into the left hand and the dipper on the left side is taken out of the boiling water, and used to plunge the milk vigorously for at least 5 seconds. The dipper is then emptied, and the sample is withdrawn from well below the surface of the milk. The dipper handle is held in such a way that the little finger is available for withdrawing the stopper, which is then held between the little finger and the palm of the hand. The sample is poured into the tube up to the 10 ml. mark, and the stopper is replaced. The dipper is then rinsed in cold water and returned to the hot water on the right of the other dippers. By taking the dipper from the left, and replacing it on the right, sterilisation between samples is ensured. If already available approved types of plungers and short-handled dippers may be used.

Notes—

- (a) Care must be taken to avoid contamination of the narrow end of the stopper which fits into the mouth of the test-tube.
- (b) Caps may be used if stoppers are not available.

Labelling the sample.

The container or test-tube is numbered or labelled with the particulars necessary to enable the sample to be identified in the laboratory.

- (i) Name or code number of producer, or laboratory number of sample.
- (ii) Name of the farm at which the milk was produced.
- (iii) A.M. or P.M. or MIXED milk.
- (iv) Time of sampling.

Owing to the difficulty of writing on the test-tube it is more convenient to enter these details in a book of records on the sampling platform, only writing the laboratory number on the tube.

(b) Routine Resazurin Test (provisional technique)(v).*Sampling at creameries, depots and dairies.*

Samples will be taken from the churns within 1 hour of arrival at the creamery, depot or dairy or at such other place as may be determined by the Advisory Bacteriologist. Samples may be of morning or evening milk separately when churns are labelled or can otherwise be distinguished. Alternatively, a sample of mixed a.m. and p.m. milk may be taken. A sample from a single meal shall be taken from churns at random. When the consignment consists of 2 to 4 churns, at least 2 shall be sampled ; of 5 to 9 churns 3, and of 10 or more churns 4 will be sampled. A sample of mixed a.m. and p.m. milk will consist of either a single churn sample if this contains the entire produce of two meals, or a composite sample of aliquot portions taken at random as above.

Dippers will be used for sampling. The cup of the dipper will have a capacity of at least 3 ozs. and the handle should be approximately 15 inches long. Alternatively, approved plunger-dippers may be used. At least three will be required for each sampler. Dippers must be sterilised before use. Alternatively the following method may be used. Immediately before sampling, each dipper will be rinsed in cold water and immersed to within 3 inches of the hooked end of the handle in water not below 200° F. for not less than 30 seconds. This procedure will be repeated after taking each sample. The milk in the churn will be vigorously stirred and plunged with the dipper for at least 5 seconds, and the sample then taken from well below the surface of the milk. The sample will be poured into a sterile sampling bottle, 1-inch boiling-tube or test-tube and stoppered immediately ; the part of the stopper or cap which may come into contact with the milk must not be allowed to come into contact with any unsterile object or surface. Test-tubes ($6'' \times \frac{5}{8}''$) must not be used for sampling where more than one churn is sampled from any one producer. If a composite sample is taken the dipper need not be sterilised between the taking of aliquot portions. The aliquots will be approximately in proportion to the volumes of milk in the churns sampled.

Notes—

- (a) It is advisable that two persons should always be present when a number of samples is to be taken rapidly at any one place ; one to take the sample and the other to handle the containers and check the identity of the samples.
- (b) Where from any one producer evening and morning samples are taken separately, an equal number of each should be taken over a given period ; for example, one morning sample and one evening sample per month.
- (c) Where it is desired to use the same sample for chemical tests, churns may first be plunged with sterile plungers in order to obtain a satisfactory sample for this purpose.

Sampling producer-retailers' milk and other milk by Itinerant Samplers.

Producer-retailers' samples will be taken at any point between the place of production and delivery to the consumer. Supplies to small dairies and milk of producer-retailers will be sampled at the dairy when possible (but may be taken in the course of

delivery to the consumer). If the milk to be sampled is in bottles or cartons, the sample will consist of one bottle or carton taken at random and delivered intact to the testing laboratory, or transferred aseptically indoors to a sterile sample bottle. Loose milk will be sampled from the churn or hand-can as described in paragraph 1 and collected in sterile containers. The 3-oz. milk-sampling bottle (B.S.S. No. 809—1938) is particularly recommended for this work. The container must be as full as practicable to prevent churning of the fat during transport. Sampling will be carried out with one of the following methods :—

- (a) The retailer's own dipper.
- (b) From the tap of the churn—after thorough plunging with the retailer's own plunger.
- (c) Approved glass or metal milk "thieves" at least 12 inches long wrapped in Kraft or greaseproof paper and sterilised either at the testing laboratory or by the sampler by the method given on p. 100, *ante*. Milk "thieves" must be unwrapped aseptically and held at one end only. The "thief" is then inserted into the milk to a depth of at least 8 inches and the milk stirred vigorously by rotary motion 25 times. The tube is withdrawn full of milk, emptied and then reinserted in the milk without thumb closure. When filled the tube is closed and the sample withdrawn. The sample will consist of at least 3 ozs.
- (d) Long-handled dippers sterilised at the testing laboratory in metal containers or individually wrapped in Kraft or greaseproof paper or sterilised as laid down on p. 100, *ante*.

Notes—

- (a) Approved metal sampling outfits may be used.
- (b) Samples should not be unduly exposed to heat during sampling or transit but they must *not* be packed in ice.

Identification of Samples.

The container must be numbered or labelled with the particulars necessary to enable the sample to be identified in the laboratory, *e.g.*,

- (i) Name or code number of producer,
or name and address of the farm at which the milk was produced,
or laboratory number of sample.
- (ii) A.M., P.M. or Mixed milk (EMX or MEX).
- (iii) Time of sampling.

Owing to the difficulty of writing on the container it may be more convenient to enter the details in a book or sheet of records at the time of sampling, only writing the code or sample number on the container.

Sampling of tank milk.—It is extremely difficult to obtain a truly representative sample of the contents of large milk tanks which may hold up to 2,000 or 3,000 gallons. Wilson *et al.*(*w*) recommend that the contents of the tank be transferred to an empty storage tank and then immediately sampled either from the outlet tap or preferably by means of a dipper from the top.

(*w*) Wilson *et al.*, *op. cit.* (see note (*q*), p. 103, *ante*), p. 20.

The provisional technique for the sampling of tanker milk, adopted for use under the National Milk Testing and Advisory Scheme(x), is as follows:—

The milk shall be thoroughly agitated by vigorous plunging with a plunger having a handle at least 6' in length. A suitable diaphragm (disc) is one 16" in diameter and containing up to 18 holes 1" in diameter. The plunger must be thoroughly cleaned and then rinsed in clean tap water immediately before use.

The following method of sampling is recommended:—

Immediately after plunging a sample shall be taken with a sterile dipper attached if necessary to a suitable rod by a metal clip. The sample shall be poured into a sterile bottle immediately on withdrawal of the dipper.

If the above method is impracticable the following alternatives may be used:—

- (1) A sample rod may be used; it should consist of a metal rod 4' in length with a looped handle at one end and a short right-angled bend at the other end to form a support for a sterile sample bottle, of at least 3 ozs. capacity, which is held by a strong clip around its neck. The rubber stopper is removed, the bottle dipped quickly into the milk, withdrawn and stoppered.
- (2) A sterile sampling "thief" may be used, the top end being open whilst the "thief" is thrust down below the surface; the sample shall be transferred to a sterile bottle immediately after withdrawal.

Sampling should be carried out within 30 minutes of completion of filling the tanker, and the milk mixed by vigorous plunging for 5 minutes. A sample of at least 3 oz. must then be taken immediately.

Where, as is the case with the sampling of churn and tank milk, a quantity of milk has to be removed from a container and placed in a sterile bottle, it is important that the bottle should be filled up to the neck, as it has been shown that the bacterial content of milk in a partly filled bottle is likely to rise to a greater extent than in a full bottle(y).

Extent of sampling for bacteriological examination.—Except in the case of heat-treated milk (see *post*, p. 441) there is no standard for the sampling of milk for bacteriological examination. In the case of heat-treated milk the Ministry of Health require not less than two samples a month for submission to the phosphatase test (see *ante*, p. 89), and where unsatisfactory results occur, further samples should be taken at more frequent intervals, even daily, so that the authority may be in a position to see that the requirements of Regulation 55G (see *post*, p. 442) are being complied with. So far as the *methylene blue test* (see *ante*, p. 83) is concerned, samples should

(x) Ministry of Agriculture and Fisheries, Form No. B564/TPB.

(y) Wilson *et al.*, *op. cit.* (see note (q), p. 103, *ante*), p. 22.

be taken as often as may be necessary, having regard to such circumstances as the record of the particular dairy, the season of the year and the time taken in transport(z).

With regard to the biological examination of milk for the detection of tubercle bacilli it is desirable that samples should be taken not less frequently than twice a year and wherever possible these should be taken on the farm or before the milk of one herd has been mixed with that from other herds. Although samples from bulked milk are sometimes examined for the presence of tubercle bacilli, it is usually difficult if not impossible to trace the affected animals, owing to the number of herds contributing to the mixed milk. For this reason it is much better to concentrate on the sampling of milk of single herds for biological examination.

Reports on Official Bacteriological Tests carried out under the Milk (Special Designations) Regulations (see *post*, p. 449).—The Ministry of Health have prescribed forms for reporting the result of the bacteriological tests applied to designated milk(a).

Action taken as a result of the bacteriological examination of milk.—Where milk is examined biologically for the presence of *tubercle bacilli* a period of approximately 6 weeks elapses before the result is obtained. In the case of a positive result, notification must be sent to the medical officer of health of the county or county borough council within whose area the farm where the milk was produced is situated, who in turn notifies the Divisional Veterinary Inspector of the Ministry of Agriculture and Fisheries. Animals found to be excreting tuberculous milk or to be suffering from certain forms of tuberculosis, must be slaughtered in accordance with the provisions of the Tuberculosis Order, 1938(b).

In the case of *designated milk* action may be taken by the licensing authority with a view to the revocation or suspension of the licence, where the milk fails to comply with the prescribed bacteriological standard laid down in the Milk (Special Designations) Regulations, 1936 to 1946 (see *post*, p. 418).

There is no bacteriological standard for *non-graded milk*, with the result that each local authority is left to decide the action to be taken in individual cases where the bacteriological examination reveals milk which is considered to be unsatisfactory. Some authorities adopt the standard laid down for "accredited milk"(c), but no statutory action is possible in respect of non-graded milk sampled from the producer or

(z) Circular 31/44, Ministry of Health, 3rd April, 1944.

(a) Memo. 139/Foods (Jan. 1937), Ministry of Health.

(b) S.R. and O., 1938, No. 165; and see *post*, p. 532.

(c) Methylene blue and coliform tests—see *post*, p. 429.

wholesaler. In the case of *retailers* the local authority may take steps to remove the dairyman's name from the register as provided by section 22 of the Act of 1938(*d*), *provided they are satisfied that the consumption of the milk is likely to endanger the public health*, which is by no means certain in every case. In general, however, the bacteriological reports of milk samples are used for advisory purposes, to strengthen the hands of the sanitary officer in securing improvements in the methods of production, handling, transport and distribution of milk. For this purpose it is desirable to forward the results of all examinations—good and bad—to the person from whom the milk is obtained.

So far as the testing of milk under the National Milk Testing and Advisory Scheme is concerned, at present the results are used for advisory purposes only, but it is intended at a future date to use the test results as a basis for the payment of milk on a keeping quality standard. Particulars of the Scheme will be found on page 391, *post*.

Records of bacteriological examinations of milk.—It is desirable that a register of the results of the bacteriological examination of milk samples should be kept and this may be done by using a card for each separate supply, showing the following information :—

Name and address of producer or dairyman ;
Class of milk—ungraded or graded ;
Date sample obtained ;
Result of bacteriological examination ; and
Action taken with respect to unsatisfactory samples.

(*d*) 31 Halsbury's Statutes 269 ; and see *post*, pp. 369 and 373.

PART II.

COMPOSITION OF FOOD AND DRUGS.

CHAPTER 5.

ADULTERATION OF FOOD AND DRUGS.

INTRODUCTION.

The law relating to the composition and adulteration of food and drugs is found mainly in Part I of the Act of 1938(a). It is administered by food and drugs authorities (see *ante*, p. 19) and operated by sampling officers (see *ante*, p. 51), who are almost invariably sanitary inspectors in the case of county borough, borough and urban districts, less frequently so in the case of county councils, where the work is often carried out by police officers, weights and measures inspectors or officers especially appointed and working in the public control department.

The adulteration of food and drugs may involve—

- i—the addition of an ingredient not normally present in the article in question, which may or may not be harmful to the consumer ;
- ii—the abstraction of an ingredient normally present in the article, either in whole or in part ;
- iii—the substitution of a different article to that demanded by the purchaser ;
- iv—the addition of a preservative to food in contravention of the special provisions relating to preservatives (see *post*, p. 177) ;
- v—the use of a label or description applicable to an article which is incorrect in any particular ; or
- vi—the sale of an article the composition of which does not comply with a prescribed legal standard.

It must be emphasised that the adulteration of food does not necessarily reduce its value, either financially or dietetically, nor, as a general rule, does it affect the fitness of the food for human consumption. The procedure for dealing with food which is unsound and unfit for human consumption is quite different to that in respect of adulterated food (see Part III, *post*, pp. 225 *et seq.*).

A purchaser may have a right of action against a vendor under the common or criminal law, in respect of a sale of food which may also constitute an offence under the Act of 1938. It was held that it was a misdemeanour knowingly to mix noxious ingredients with food intended for sale(b), and a

(a) 31 Halsbury's Statutes 254.

(b) *R. v. Dixon* (1814), 3 M. & S. 11 ; 14 Digest 34, 48.

person who knowingly sells food or drugs under a false description may be guilty of obtaining money by false pretences(c). It does not follow, however, that a conviction under the Act of 1938, implies that the defendant is guilty of negligence at common law(d).

RESTRICTIONS ON THE ADDITION OF OTHER SUBSTANCES TO ANY FOOD OR DRUG

The restrictions on the addition of other substances to food or drugs are prescribed in section 1 of the Act of 1938, *infra*.

Section 1, Food and Drugs Act, 1938.—Restrictions on the addition of other substances to any food or drug.

- (1) No person shall add, or direct or permit any other person to add—
 - (a) any substance to any food so as to render the food injurious to health ; or
 - (b) any substance to any drug so as to affect injuriously the quality or potency of the drug,
 with the intent that the food or drug may be sold in that state.
- (2) No person shall sell, or have in his possession for the purpose of sale, any food or drug to which any substance has been so added.
- (3) A person who contravenes any of the provisions of this section shall be guilty of an offence.

The expression “ *food* ” means—

any article used as food or drink for human consumption, other than drugs or water, and includes—

- (a) any substance which is intended for use in the composition or preparation of food ;
- (b) any flavouring matter or condiment ; and
- (c) any colouring matter intended for use in food :

provided that, notwithstanding anything in this definition, the addition of any colouring or flavouring matter or condiment to an article used as food or drink shall be deemed to be the addition of a substance to food(e).

It has been held that chewing gum is not a food(f).

The expression “ *drug* ” includes medicine for internal or external use(e) ; and the expression “ *substance* ” includes a liquid(e).

It should be noted that the expression “ *person* ” includes a limited company(g), and if the business of the company is being managed by a receiver, proceedings should be taken against him(h). As to legal proceedings generally, see *post*, p. 170 *et seq.* Although the master is not, as a rule, responsible

(c) *R. v. Foster* (1877), 2 Q.B.D. 301 ; 15 Digest 996, 11,146.

(d) *Square v. Model Farm Dairies (Bournemouth), Ltd.*, [1939] 2 K.B. 365 ; [1939] 1 All E.R. 259 ; Digest Supp.

(e) Sect. 100, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 313.

(f) *Bennett v. Tyler* (1900), 64 J.P. 119 ; 25 Digest 70, 3.

(g) See sect. 2, Interpretation Act, 1889 ; 18 Halsbury's Statutes 992.

(h) *Meigh v. Wickenden*, [1942] 2 K.B. 160 ; [1942] 2 All E.R. 68.

for the criminal acts of his servants carried out without his knowledge or authority(*i*), it will be observed that subsection (2) of section 1, *supra*, makes the master responsible for the acts of his servants whether carried out with or without his knowledge or authority. Even though an employee acts in direct opposition to the precise instructions of the employer, the latter is still responsible for the acts of the former and liable to be proceeded against(*k*). In the case of *Parker v. Alder*, the farmer, who consigned milk by rail to London, was convicted of an offence even though it was found as a fact that water had been added to the milk during its transit on the train and without the knowledge of the farmer. It has been held, however, that a servant can also be convicted when he actually sells the food(*l*). A person against whom proceedings are taken is entitled to have some other person, whom he alleges to be responsible for the offence, brought before the court, and if the court are satisfied that the original defendant is not guilty of the offence which was committed by the second defendant, the latter may be convicted and the former acquitted(*m*). This provision is a safeguard for the employer, who, whilst being legally responsible under section 1, *supra*, for the acts of his servants, is nevertheless entitled to be acquitted if he proves to the satisfaction of the court that the offence was in fact committed by his servant, without his knowledge or approval. This provision is, of course, of much wider application (see *ante*, p. 13).

It should be noted that an offence under this section relates to the condition of the food *after* the addition of an ingredient to the food and not to the ingredient itself. The food, *when mixed with the added ingredient*, must be injurious to health(*n*). It has also been held(*o*) that the food need not be injurious to the health of every individual. Before the issue of the Public Health (Preservatives, etc., in Food) Regulations, 1925 to 1940 (see *post*, p. 177 *et seq.*), which regulate the addition of preservatives and colouring matter to food, it was held that the defendants were properly convicted under section 3 of the Sale of Food and Drugs Act, 1875(*p*), in respect of cream containing a permitted preservative(*q*), such cream being injurious to infants and invalids; and it was also held

(*i*) *Harrison v. Leaper* (1862), 26 J.P. 373; 14 Digest 41, 104.

(*k*) See *Brown v. Foot* (1892), 61 L.J.M.C. 110; 25 Digest 82, 104.

Parker v. Alder, [1899] 1 Q.B. 20; 25 Digest 81, 97.

Andrews v. Luckin (1917), 87 L.J.K.B. 507; 25 Digest 81, 98.

(*l*) *Hotchin v. Hindmarsh*, [1891] 2 Q.B. 181; 25 Digest 98, 222.

(*m*) See s. 83, F. & D. A., 1938; 31 Halsbury's Statutes 305; and *ante*, p. 13.

(*n*) See *Hull v. Horsnell* (1904), 92 L.T. 81; 25 Digest 79, 84.

(*o*) *Cullen v. M'Nair* (1908), 99 L.T. 358; 25 Digest 79, 82.

(*p*) 13 Halsbury's Statutes 624.

(*q*) *Haigh v. Aerated Bread Co., Ltd.*, [1916] 1 K.B. 878.

that the addition of copper sulphate to peas to improve the natural colour had rendered them injurious to health(*r*). Both these matters are now regulated by the Preservatives Regulations, *supra*. Where regulations under the Act of 1938(*s*) contain provisions prohibiting or restricting the addition of any substance to any food, the addition of that substance—

- 1—if made in contravention of any of the regulations which is expressed to be made for the prevention of danger to health does ; and
- 2—if made to an amount not exceeding the limit, if any, specified by any of the regulations, does not,

for the purposes of Part I of the Act of 1938, render the food injurious to health(*t*). It is clear, for example, that the presence of a permitted preservative in excess of the amount prescribed in the Preservatives Regulations (see *post*, p. 182), is an offence not only against the Regulations themselves but against section 1 of the Act of 1938 (see *ante*, p. 112). This provision applies only in respect of regulations made for the prevention of danger to health.

Although it was the obvious intention of the Local Government and Public Health Consolidation Committee—who drafted the Act of 1938—that the “warranty” defence (see *post*, p. 174) should apply in proceedings under section 1, *supra*(*u*), it is by no means certain that section 84 of the Act of 1938(*v*), which deals with this matter, actually provides such a defence in respect of the sale of a food or drug to which has been added a substance which has rendered the article in question injurious to health. Section 84, *supra*, provides a warranty defence in respect of an article which is not of the nature, substance or quality demanded, and it is not clear that the sale of an article which was injurious to health in accordance with section 1 of the Act of 1938, would be within that definition. The point does not appear to have been before the courts.

Action may be taken under section 3 of the Act of 1938 (see *post*, p. 116), notwithstanding that the offence constitutes a contravention of section 1, *supra*(*w*).

It should be observed that, under subsection (1) of section

(*r*) *Summers v. Grist* (1896), 60 J.P. 346 ; 25 Digest 79, 85.

(*s*) See Food and Drugs Act, 1938 ; sect. 8, *post*, p. 159 ; sect. 20, *post*, p. 362 ; and sect. 30, *post*, p. 223.

(*t*) *Ibid*, sect. 7 ; 31 Halsbury's Statutes 257.

(*u*) Local Government and Public Health Consolidation Committee (Cmd. 5628), 1937, p. 12.

(*v*) 31 Halsbury's Statutes 306 ; and see *post*, p. 175.

(*w*) *Goulder v. Rook*, [1901] 2 K.B. 290 ; 25 Digest 80, 96.

1, *supra*, guilty knowledge must be proved, but under subsection (2) it is not necessary to do so(x).

A person guilty of an offence under this section is liable to a fine not exceeding £20 and, in the case of a subsequent offence, to a fine not exceeding £100 or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment(y).

RESTRICTIONS ON THE ABSTRACTION FROM ANY FOOD OF ANY CONSTITUENT THEREOF

It is an offence under section 2 of the Act of 1938, *infra*, to abstract any constituent from food so as to affect injuriously its nature, substance or quality, without giving proper notice of the abstraction to the purchaser.

Section 2, Food and Drugs Act, 1938.—Restrictions on the abstraction from any food of any constituent thereof.

- (1) No person shall abstract, or direct or permit any other person to abstract, from any food any constituent thereof so as to affect injuriously the nature, substance or quality of the food with intent that it may be sold in its altered state—
 - (a) without notice to the purchaser of the alteration ; or
 - (b) whether with or without such notice, if in that state the food does not comply with any relevant provisions contained in regulations made under this Act for prescribing the composition of food.
- (2) A person who contravenes any of the provisions of this section shall be guilty of an offence.

Except in the case of an offence under subsection (1)(b) in respect of failure to comply with the provisions of any food regulations, guilty knowledge must be proved. Regulations have been made with respect to milk, which provide that if a sample contains less than 3 per cent. of milk fat, and/or 8·5 per cent. of solids-not-fat, or a sample of skimmed or separated milk contains less than 8·7 per cent. of total solids other than fat, it is to be presumed that abstraction has taken place or that water has been added, until the contrary is proved(z).

It should be noted that this section relates to food only and not to drugs.

A person guilty of an offence under this section is liable to a fine not exceeding £20 and, in the case of a subsequent offence, to a fine not exceeding £100 or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment(y).

(x) See *Dyke v. Gower*, [1892] 1 Q.B. 220 ; 25 Digest 92, 174 followed in *Bridges v. Griffin*, [1925] 2 K.B. 233 ; 25 Digest 130, 508.

(y) Sect. 79, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 303 ; and see *post*, p. 176.

(z) Sale of Milk Regulations, 1939 ; S.R. and O., 1939, No. 1417.

FOOD OR DRUGS NOT OF THE NATURE, SUBSTANCE OR QUALITY DEMANDED

The most important section in Part I of the Act of 1938 is section 3, *infra*, relating to the sale of food and drugs not of the nature, substance or quality demanded by the purchaser. Most of the prosecutions are in respect of offences under this section, and every sampling officer must familiarise himself that its provisions and the case law which has arisen as a result of the cases that have been before the courts. Although many of the cases taken under this section are perfectly straightforward, it must be emphasised again (see *ante*, p. 50) that strict compliance with the procedure relative to the taking of and dealing with samples, is essential for the successful prosecution of legal proceedings. Sampling officers must pay strict attention to these matters, otherwise cases will be lost on technical grounds.

Section 3, Food and Drugs Act, 1938,—Prohibition against sale of any food or drug not of the nature, substance or quality demanded.

- (1) If a person sells to the prejudice of the purchaser any food or drug which is not of the nature, or not of the substance, or not of the quality, of the food or drug demanded by the purchaser, he shall, subject to the provisions of the next succeeding section, be guilty of an offence.
- (2) Where regulations made under this Act contain provisions prescribing the composition of, or prohibiting or restricting the addition of any substance to, any food, a purchaser of that food shall, unless the contrary is proved, be deemed for the purposes of this section to have demanded food complying with the provisions of the regulations.
- (3) In proceedings under this section it shall not be a defence to allege that the purchaser bought for analysis or examination and therefore was not prejudiced.

Proceedings may be taken under this section or under section 1 (see *ante*, p. 112)(a), but it must be remembered that although a person may be liable to prosecution under more than one provision of an Act, he cannot be punished twice for the same offence(b). It is quite clear that there is no necessity to prove guilty knowledge in proceedings under section 3, *supra*(c).

Selling to the prejudice of the purchaser.—The case law has definitely established that—

- 1—a purchaser cannot be prejudiced if at the time a sale takes place he is informed, by notice or otherwise, that the article is not of the nature, substance

(a) *Goulder v. Rook*, [1901] 2 K.B. 290 ; 25 Digest 80, 96.

(b) Interpretation Act, 1889, sect. 33 ; 18 Halsbury's Statutes 1004

(c) See *Betts v. Armstead* (1888), 20 Q.B.D. 771 ; 25 Digest 80, 95 ; etc.

or quality demanded(*d*), *e.g.* if a purchaser asks for coffee and he is supplied with a mixture of coffee and chicory in a packet which is properly labelled, no offence is committed(*e*) ; and

2—it is not necessary to show that a purchaser sustained actual prejudice or damage by the sale of an article, it is sufficient that he was sold something which was not of the nature, substance or quality he demanded(*f*). If this were not so, sampling officers would be in a difficulty, as it could always be argued that when making purchases, as they do, for purposes of analysis only, they could not be prejudiced, but this point is now covered specifically by subsection (3) of section 3, *supra*.

In the case of *Pearks, Gunston and Tee, Ltd. v. Ward*(*g*), it was held that a purchaser was prejudiced even if he had information as to the nature, substance or quality of the article demanded, if he was not so informed at the time of purchase, either by notice, by the nature of the article itself, or by what passed at the time of the purchase. In delivering judgment in this case, Lord ALVERSTONE, C.J., said: “*the question is what would be the position, not of a skilled purchaser like an inspector, but of an ordinary person purchasing the article without any special knowledge.*” There have been a number of cases indicating that the notice to the purchaser must be in clear terms, readily visible and understandable to all concerned(*h*). Provided the purchaser is told at the time of sale the true nature, substance or quality of the article supplied to him, it does not matter that prior to the sale a false description of the article had been supplied(*i*). Even if the purchaser knew at the time of the sale, as a result of the price paid, that the seller was making a false representation, an offence is committed if the latter fails to disclose the true facts to the purchaser(*k*).

(*d*) *Sandys v. Small* (1878), 3 Q.B.D. 449 ; 25 Digest 83, 113 ; and other cases reported at page 87 *et seq.*, *Bell's Sale of Food and Drugs*, Eleventh Edition, London, Butterworth & Co., Ltd.

(*e*) See *Higgins v. Hall* (1886), 51 J.P. 293 ; 25 Digest 86, 133.

(*f*) *Hoyle v. Hitchman* (1879), 4 Q.B.D. 233 ; 25 Digest 83, 110 ; and other cases reported in “*Bell*,” *op. cit.*, p. 93.

(*g*) [1902] 2 K.B. 1 ; 25 Digest 81, 101.

(*h*) See *Rodbourn v. Hudson*, [1925] 1 K.B. 225 ; 25 Digest 87, 140.

Preston v. Grant, [1925] 1 K.B. 177 ; 25 Digest 86, 135.

Collett v. Walker (1895), 64 L.J.M.C. 267 ; 25 Digest 84, 118.

Dawes v. Wilkinson, [1907] 1 K.B. 278 ; 25 Digest 86, 139 ; and *Star Tea Co., Ltd. v. Neale* (1909), 73 J.P. 511 ; 25 Digest 83, 116 ; etc.

(*i*) See *Kirk v. Coates* (1885), 16 Q.B.D. 49 ; 25 Digest 80, 91 ; and *Frew v. Gunning* (1901), 3 F. (Ct. of Sess.) 51 ; 25 Digest 130, *h*.

(*k*) *Heywood v. Whitehead* (1897), 76 L.T. 781 ; 25 Digest 83, 111.

As to the provisions of the Act of 1938 relating to labels, see *post*, p. 142 *et seq.*

It is evident from the cases already referred to, that a notice exhibited in the place of sale, must be in sufficiently clear terms to be understood by all possible purchasers *and* must be so placed as to be readily seen by all such persons. Sampling officers should pay particular attention to this point when making purchases of articles such as butter, coffee, wines and spirits, etc., likely to consist of mixtures or to be otherwise affected by the addition or abstraction of other ingredients. A seller cannot rely on a notice if it is in ambiguous terms or is so placed that it cannot be seen by any and every purchaser.

Nature, substance or quality of food or drug demanded.—

It is important to note that the section relates to any food or drug which is "*not of the nature, OR not of the substance, OR not of the quality,*" of the article demanded. It is quite clear that these are alternative expressions. It has been held that the word "*quality*" means commercial quality and not merely the description or kind of the food or drug demanded(*l*).

Under subsection (2) of section 3, *supra*, a purchaser is deemed to have asked for an article of the quality or composition prescribed by regulations made under the Act of 1938. Consequently, it is only necessary for the prosecution to prove that a food or drug does not comply with the prescribed standard, they have not to satisfy the court as to the standard adopted. It is for the defendant to prove that the purchaser did not ask for an article of the prescribed standard. As to the standards laid down, see *post*, p. 161. Where a statutory standard has not been laid down it is for the court to fix its own standard as a matter of fact on the evidence before it(*m*), but in a case where there was no prescribed standard under the Act of 1938, the court refused to accept a standard laid down in a food control order which came into force at a date subsequent to the sale of the article by the appellants(*n*). It is unfortunately the case that on many occasions there is a conflict of expert evidence as to the standard composition of any particular food or drug, eminent public analysts appearing on both sides. It must be a matter of extreme difficulty for magistrates to decide, on the expert evidence before them, the proper standard in each case. The whole matter of food standards was considered by a Departmental Committee,

(*l*) *Anness v. Grivell*, [1915] 3 K.B. 685 ; 25 Digest 89, 154.

(*m*) See *Roberts v. Leeming* (1905), 69 J.P. 417 ; 25 Digest 88, 150.

Wilson & M'Phee v. Wilson (1903), 68 J.P. 175 ; 25 Digest 84, h.

Preston v. Jackson (1928), 73 Sol. J. 712 ; and

Hunt v. Richardson, [1916] 2 K.B. 446 ; 25 Digest 128, 492.

(*n*) *Robinson (Thomas), Sons & Co., Ltd. v. Allardice* (1944), 108 J.P. 101.

which reported in 1934(o). This Committee, while of opinion that in some cases standards or declarations of composition were necessary for the protection of the consumer, did not consider that there was a case for the extension of standards or definitions to all articles of food. They did not consider it necessary, as recommended by the Society of Public Analysts, to set up a new permanent body, constituted as an Advisory Committee, to consider and advise the Minister of Health in regard to the fixing of standards and definitions. It is interesting to note, however, that the Ministry of Food, which was established in October, 1939, apparently took a different view, with the result that the Government issued a White Paper(p) dealing with the Labelling and Advertising of Food, and subsequently made the Defence (Sale of Food) Regulations, 1943(q), under which commodity orders have been made prescribing standards for various foods (see *post*, p. 163). It is to be hoped that these standards will be maintained permanently, as they greatly assist local authorities and the courts in the discharge of their duties under the Act of 1938.

So far as drugs are concerned, the standard for compounded drugs as laid down in the British Pharmacopœia is accepted if the purchaser asks for such a compounded drug(r). As an emergency measure, however, Defence (General) Regulation No. 60H(s) authorises two Secretaries of State and the Minister of Health acting jointly, in cases where, owing to a scarcity of any substance used as a medicine or component of a medicine, it is expedient to do so, to make an order in relation to that substance requiring the use or supply of such other substance or mixture of substances as may be specified in the order. Such an order has the effect of amending the British Pharmacopœia as an emergency measure during the period the Defence Regulation is in operation. A number of Orders(t) have been made under Regulation 60H. Various war-time amendments of the B.P. itself have also been issued.

It has been held that where there is a conflict of opinion between the public analyst and other experts on the question of whether the purchaser expects to get an article of a particular composition it is for the court to obtain evidence sufficient to determine the point(u), and, in the absence of other evidence, the court must accept the certificate of the public analyst

(o) Ministry of Health, Departmental Committee on the Composition and Description of Food, 1934; H.M.S.O.

(p) Cmd. 6482, November, 1943; H.M.S.O.

(q) S.R. and O., 1943, No. 1553.

(r) See *White v. Bywater* (1887), 19 Q.B.D. 582; 25 Digest 90, 160; and *Dickins v. Randerson*, [1901] 1 K.B. 437; 25 Digest 90, 159.

(s) S.R. and O., 1941, No. 115.

(t) S.R. and O., 1944, No. 795, as amended by S.R. and O., 1946, No. 490, is still in force.

(u) *Collins Arden Products, Ltd. v. Barking Corpn.*, [1943] K.B. 419.

including his opinion as to the nature, substance and quality of the article concerned(v). In reaching a decision the justices are entitled to use their own personal knowledge and experience, even though no evidence is submitted upon the point(w), but they should disclose it so that the parties can deal with it if they wish to do so(x).

Apart from the cases where a standard has been prescribed by Regulations made under the Act of 1938, the question of whether a food or drug is of the nature, substance or quality demanded is a matter of fact(y). It is interesting to note that in the case of *Sandys v. Rhodes*(y) the sale of a variety of tapioca as sago was held not to be an offence because the trade generally knew tapioca as sago, and in the case of *Anderson v. Britcher*(y), cane sugar from Mauritius was similarly accepted as Demerara sugar, the magistrate finding as a fact that Demerara sugar now means yellow crystallised cane sugar regardless of its place of origin. On the other hand, it has been held that an offence is committed if the article sold is entirely different from that which was demanded(z).

Provisions with respect to certain foods.—It is an offence to keep adulterants in bakehouses and flour mills(a) or in butter factories(b). As to the detailed provisions with respect to the composition and adulteration of certain foods, including butter, margarine, cream, ice-cream, etc., see Chapter 7, *post*, p. 197. See also Chapter 13 (*post*, p. 332) regarding the adulteration of imported food.

SPECIAL PROVISIONS RELATING TO MILK.

Milk is especially liable to be adulterated and, as has been pointed out previously (see *ante*, p. 57), it has long been the rule to take approximately one milk sample to two samples of all other foods. The ease with which milk can be tampered with, either by the addition of water, the extraction of fat, or

(v) *Bowker v. Woodroffe*, [1928] 1 K.B. 217; Digest Supp.

Broughton v. Whittaker, [1944] K.B. 269; [1944] 2 All E.R. 544.

(w) *R. v. Field, etc.*, *Justices, Ex parte White* (1895), 64 L.J.M.C. 158; 25 Digest 88, 147.

(x) *Keane v. Mount Vernon Colliery Co., Ltd.*, [1933] A.C. 309; Digest Supp.

(y) See *Webb v. Knight* (1877), 2 Q.B.D. 530; 25 Digest 88, 146.

Goulder v. Rook, [1901] 2 K.B. 290; 25 Digest 80, 96.

Friend v. Mapp (1904), 68 J.P. 589; 25 Digest 80, 86.

Wolfenden v. M'Culloch (1905), 69 J.P. 228; 25 Digest 128, 498.

Pashler v. Stevenitt (1876), 41 J.P. 136; 25 Digest 90, 162.

Sandys v. Rhodes (1903), 67 J.P. 352; 25 Digest 89, 152; and

Anderson v. Britcher (1913), 78 J.P. 65; 25 Digest 90, 157.

(z) *Knight v. Bowers* (1885), 14 Q.B.D. 845; 25 Digest 89, 151.

(a) Sect. 31, Food and Drugs Act, 1938; 31 Halsbury's Statutes 273; and see *post*, p. 224.

(b) *Ibid*, sect. 36; 31 Halsbury's Statutes 277; and see *post*, p. 206.

both, has led to many prosecutions for adulterated milk, and to a complicated procedure for ensuring that the guilty person—producer, wholesaler or retailer—is discovered and convicted.

The special provisions relative to the sampling of milk, contained in section 71 of the Act of 1938 and the Third Schedule, are dealt with in detail in Chapter 4 (*ante*, p. 69), which should be read in conjunction with this chapter.

Section 23 of the Act of 1938, *infra*, empowers the Minister of Agriculture and Fisheries to make regulations as to the presumptive evidence of adulteration of milk.

Section 23, Food and Drugs Act, 1938.—Regulations as to presumptive evidence of adulteration of milk.

- (1) The Minister of Agriculture and Fisheries may make regulations for determining what deficiency in any of the normal constituents of milk, or what proportion of water, in a sample shall for the purposes of this Act raise a presumption, until the contrary is proved, that the article sampled is not genuine milk.
- (2) Regulations made under this section shall be laid before Parliament as soon as may be after they are made.

In accordance with this section, the Sale of Milk Regulations, 1939(c), prescribe the following presumptive standards—

- 1—Where a sample of milk (not being milk sold as separated or condensed milk) contains less than 3 per cent. of milk fat, it shall be presumed for the purposes of the Food and Drugs Act, 1938, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk fat, or the addition thereto of water.
- 2—Where a sample of milk (not being milk sold as separated or condensed milk) contains less than 8·5 per cent. of milk solids other than milk fat, it shall be presumed for the purposes of the Food and Drugs Act, 1938, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk solids other than milk fat, or the addition thereto of water.
- 3—Where a sample of separated milk (not being condensed milk) contains less than 8·7 per cent. of milk solids other than milk fat, it shall be presumed for the purposes of the Food and Drugs Act, 1938, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk solids other than milk fat, or the addition thereto of water.

Section 24 of the Act of 1938, *infra*, details the substances which may not be added to milk and the liquids which may not be sold as milk.

Section 24, Food and Drugs Act, 1938.—Certain additions not to be made to milk, and certain liquids not to be sold as milk.

- (1) No person shall—
 - (a) add any water or colouring matter, or any dried or condensed milk or liquid reconstituted therefrom, to milk intended for sale for human consumption ; or

- (b) add any separated milk, or mixture of cream and separated milk, to unseparated milk intended for such sale ;
or
- (c) sell, or offer or expose for sale, or have in his possession for the purpose of sale, for human consumption any milk to which any addition has been made in contravention of the provisions of this subsection.
- (2) No person shall sell, or offer or expose for sale, under the designation of milk any liquid in the making of which any separated milk or any dried or condensed milk has been used.
- (3) A person who contravenes any of the provisions of this section shall be guilty of an offence.

There have been innumerable cases relating to milk, but the present position is substantially as laid down in the case of *Hunt v. Richardson*(*d*), where it was held that no offence is committed if it can be proved that the milk is sold in the same state as it came from the cow, notwithstanding that the amount of milk fat was less than 3.0 per cent. and/or solids-not-fat less than 8.5 per cent., as laid down in the Sale of Milk Regulations, *supra*, even if the deficiency is due to improper feeding or milking(*e*). The unsatisfactory nature of this decision is well illustrated in the case of *Grigg v. Smith*(*f*), where a farmer kept only one cow. He partly milked the cow and sold the result to his customers, but the "strippings" were left for the calf. The milk sold contained only 2.6 per cent. of milk fat, but on the authority of *Hunt v. Richardson*, *supra*, the defendant was acquitted.

If the seller fails to stir the milk properly, with the result that some customers get milk deficient in fat, an offence is committed(*g*). Where milk contains less than the prescribed amount of fat and/or solids-not-fat, it is for the defence to prove that it is not adulterated. To do so, positive evidence must be submitted covering the whole period between milking and the procuring of the sample(*h*), and to rebut such defence the prosecution must show that another sample—an "appeal to cow" sample (see *ante*, p. 74)—taken from the same cows under identical conditions to those existing when the original sample was produced, was up to the required standard(*i*), but it has also been held that it is unnecessary for the defendant to prove that no one tampered with the milk, if the court are satisfied that the deficiency in solids was due to natural causes(*k*).

(*d*) [1916] 2 K.B. 446 ; 25 Digest 128, 492.

(*e*) See *post*, p. 123, as to the variations in the composition of milk.

(*f*) (1917), 87 L.J.K.B. 488 ; 25 Digest 129, 499.

(*g*) *Dyke v. Gower*, [1892] 1 Q.B. 220 ; 25 Digest 92, 174 ; and *Bridges v. Griffin*, [1925] 2 K.B. 233 ; 25 Digest 130, 508.

(*h*) *Kings v. Merris*, [1920] 3 K.B. 566 ; 25 Digest 130, 506.
Bowen v. Jones (1917), 86 L.J.K.B. 802 ; 25 Digest 130, 505.
Jenkins v. Williams (1939), 103 J.P. 183 ; Digest Supp.

(*i*) *Wilkinson v. Clark*, [1916] 2 K.B. 636 ; 25 Digest 129, 503.
Smith v. Philpott and Philpott, [1920] 1 K.B. 222 ; 25 Digest 129, 504.

(*k*) *Churcher v. Reeves*, [1942] 1 K.B. 172 ; [1942] 1 All E.R. 69.

Factors influencing the composition of milk.—Milk is an extremely complex substance, and there are many factors which affect the amount of milk fat and solids-not-fat, some of which are capable of being controlled by the farmer, others are difficult if not impossible to control.

According to Tocher(*l*), who made an extensive examination of the result of the analysis of 676 samples of milk from *individual* cows from all parts of Scotland, the average percentage composition is as follows :—

	Constituent.	Average percentage.
Butter fat	3.95
Lactose	4.64
Casein	2.43
Albumin	0.74
Other nitrogenous substances	..	0.35
Ash	0.70
Water	87.19

Davies(*m*) averages the results obtained by many workers in various countries as 3.73 per cent. milk fat and 8.89 per cent. solids-not-fat.

So far as *milk fat* is concerned, Tocher(*n*) found that the percentage in the milk of individual cows varied considerably, as will be seen by the following figures :—

Butter fat per cent.	Frequency distribution.	Butter fat per cent.	Frequency distribution.
1.625	1	Forward ..	583
1.875	—		
2.125	3	4.875	42
2.375	10	5.125	15
2.625	9	5.375	6
2.875	33	5.625	7
3.125	40	5.875	6
3.375	109	6.125	3
3.625	78	6.375	7
3.875	106	6.625	2
4.125	94	6.875	1
4.375	60	7.125	3
4.625	40	7.375	1
Forward ..	583		<u>676</u>

It will be observed that the variation for single cows ranged from 1.625 to 7.375 per cent. in genuine milk; 56, or 8.3 per cent., were below the 3.0 per cent. standard.

(*l*) Tocher, J. F. (1925), "*Variations in the Composition of Milk*"; Edinburgh, H.M.S.O., p. 114 *et seq.*

(*m*) Davies, W. L. (1939), "*The Chemistry of Milk*," Second Edition, London, Chapman & Hall, p. 15.

(*n*) Tocher (1925), *op. cit.*, p. 46.

Cranfield, Griffiths and Ling(o) obtained the following results from the mixed milk of 15 herds. Sixty, or 8·2 per cent. of the 732 samples, fell below the presumptive standard. Five of the 15 herds were known to be giving milk low in solids-not-fat.

Range per cent.	No. of samples.
2·20-2·39	3
2·40-2·59	8
2·60-2·79	12
2·80-2·99	37
3·00-3·19	67
3·20-3·39	96
3·40-3·59	99
3·60-3·79	112
3·80-3·99	93
4·00-4·19	83
4·20-4·39	44
4·40-4·59	31
4·60-4·79	21
4·80-4·99	7
5·00-5·19	10
5·20-5·39	4
5·40-5·59	3
5·60-5·79	1
5·80-5·99	1
	<u>732</u>

Mean per cent. of fat .. 3·71

Davies(p) summarised the variations in the fat content of milk found by a number of workers as follows :—

Authority.	Milk fat.		
	Maximum per cent.	Minimum per cent.	Average per cent.
Richmond	6·39	1·03	3·78
Crowther	5·30	2·00	3·70
Cranfield	6·00	2·20	3·71
Tocher	7·50	1·66	3·95
Golding, <i>et al.</i> ..	5·17	2·60	3·88

The variation in the percentage of *solids-not-fat* is generally greater than in the case of milk fat. Tocher(q) found that the figure for 676 individual cows varied from 6·875 to 10·625 per cent., the bulked milk giving 8·78 per cent. ; 167, or approximately one-quarter, were below the presumptive standard of

(o) Cranfield, H. T., Griffiths, D. G., and Ling, E. R. (1927), "*The Composition of Milk*," J. Agric. Sci., v. 17, Part 1, pp. 62-93.

(p) Davies (1939), *op. cit.*, p. 17.

(q) Tocher (1925), *op. cit.*, p. 18.

8.5 per cent. The day-to-day variation for a single cow was found to be from 8.8 to 8.2 per cent. The distribution of the 676 cases was as follows :—

<i>Solids-not-fat per cent.</i>	<i>Frequency distribution.</i>
6.875	1
7.125	—
7.375	—
7.625	5
7.875	6
8.125	44
8.375	111
8.625	150
8.875	156
9.125	110
9.375	52
9.625	19
9.875	15
10.125	4
10.375	2
10.625	1
	<hr/> 676 <hr/>

The following are the results obtained by Cranfield, Griffiths and Ling(o) :—

<i>Range per cent.</i>	<i>No. of samples.</i>
7.90-7.99	1
8.00-8.09	3
8.10-8.19	5
8.20-8.29	13
8.30-8.39	26
8.40-8.49	59
8.50-8.59	103
8.60-8.69	107
8.70-8.79	113
8.80-8.89	116
8.90-8.99	80
9.00-9.09	47
9.10-9.19	33
9.20-9.29	17
9.30-9.39	7
9.40-9.49	1
9.50-9.59	1
	<hr/> 732 <hr/>

The mean of the 732 samples was 8.746 per cent., and in 107, or 14.6 per cent., the milk fell below the standard of 8.5 per cent. It should be noted, however, that 5 of the 15 herds from which the samples were obtained were known to be giving milk low in solids-not-fat, so that some degree of selection had taken place. 518 samples were obtained from the remaining 10 herds selected at random, of which 60, or 11.6 per cent. contained less than 8.5 per cent. of solids-not-fat.

The following is the summary of variations in the amount of solids-not-fat obtained by a number of workers and tabulated by Davies(*p*) :—

Authority.	Solids-not-fat.		
	Maximum per cent.	Minimum. per cent.	Average per cent.
Richmond	10.60	4.90	8.74
Crowther	9.50	8.40	8.78
Cranfield	9.60	7.90	8.75
Tocher	10.66	7.00	8.80
Golding, <i>et al.</i> ..	9.28	8.40	8.91

Variations in the proportions of the constituents of milk may be due to a variety of factors, including the following, *viz.* :—

- 1—Breed of cow ;
- 2—Individuality of cow ;
- 3—Period of lactation ;
- 4—Age of cow ;
- 5—Health of cow ;
- 6—Kind and quality of food ;
- 7—Interval between milking ;
- 8—Efficiency of milker ;
- 9—Climatic and weather conditions ;
- 10—Excitement or exercise ;
- 11—Day-to-day variations ; and
- 12—Mixing of milk from different cows in the herd.

The effect of each factor varies, both as regards milk fat and solids-not-fat content. The mixed milk of a herd may be deficient in either or both respects, as a result of one or more of the above influences. On the other hand, the mixing of milk from a number of cows may counteract the effect of variations in that from individual animals, so that although the milk of some of the cows is deficient in fat and/or solids-not-fat, the mixed milk is up to standard.

(1) **Breed of cow.**—Milk from different breeds of cow varies considerably in its composition, and they can be divided into groups each of which is best suited for a particular purpose. According to the Ministry of Agriculture(*r*), the suitability of the leading dairy breeds for different dairy purposes is as follows :—

(*p*) See footnote, p. 124.

(*r*) Ministry of Agriculture and Fisheries (1923), "*The Selection and Milking of Dairy Cattle*," H.M.S.O. p. 5.

Specially adapted for milk-selling.	Most suitable for butter-making.	Most suitable for cheese-making.
Dairy Shorthorns. South Devons. British Friesians. Lincoln Reds. Welsh. Ayrshires. Red Polls. Kerries.	Jerseys. Guernseys. South Devons.	Shorthorns. Ayrshires. South Devons. Welsh.

Regarding the actual composition of milk from various breeds, Tocher(s) gives the following figures obtained from his records of 676 individual animals :—

Breed.	Fat.	Lactose.	Protein.	Ash.	Water.
Jersey	5·43	4·85	3·96	0·75	85·01
Guernsey	5·16	4·80	3·92	0·75	85·37
Kerry	4·67	—	—	—	—
Welsh	4·40	—	—	—	—
Ayrshire	4·09	4·57	3·27	0·69	87·38
Shorthorns	3·91	4·80	3·27	0·73	87·29
British Friesians ..	3·63	4·62	3·11	0·71	87·93

As a result of the examination of 6,566 samples from cows exhibited at the Dairy Shows of the British Dairy Farmers' Association, Drakeley(t) obtained the following results. It should be remembered, of course, that the animals were specially prepared for show purposes and kept under special showyard conditions.

Breed.	Average percentage of fat.	Breed.	Average percentage of solids- not-fat.
Jersey	5·18	Jersey	9·30
Guernsey	4·88	Guernsey	9·29
Kerry	4·30	South Devon	9·25
Dexter	4·15	Dexter	9·11
South Devon	4·02	Kerry	9·09
Ayrshire	3·97	Red Poll	9·09
Red Poll	3·81	Dairy Shorthorn	9·04
Dairy Shorthorn	3·78	Ayrshire	9·00
Lincoln Red	3·76	Lincoln Red	9·00
British Friesian	3·67	British Friesian	8·78

(s) Tocher, J. F. (1927), "*The Causes of the Variation in the proportion of butter fat in milk*," Scot. J. of Agric., v. 10, No. 1, January, 1927.

(t) Drakeley, T. J. (1927), "*The Influence of the State of Lactation and the Breed of Cow on the Yield and Quality of Milk*," J. Agric. Sci., v. XVII, part I, January, 1927, p. 126.

The mixed milk of the herd may be improved as regards fat content by the introduction of one or more Channel Island animals.

(2) **Individuality of cow.**—The milk from a single cow is subject to wide variations in composition, both from day to day and over a whole lactation period. Over a period of 10 days Mackintosh(*u*) found the fat content of the milk of three cows to vary as follows :—

				Range of butter fat.	
				Morning.	Evening.
Dairy Shorthorns.				%	%
Firefly 3rd	..	..	..	3·6–3·80	4·15–4·45
Flora ..	..	..	..	2·7–3·45	3·75–4·60
Doll 2nd	..	..	..	2·8–3·70	4·70–5·50

The yields were very uniform and milking was carried on under identical conditions, especially as regards time.

Regarding solids-not-fat, Cranfield(*v*) obtained the following results from the examination of milk from 74 individual cows in all, sampled on 8 occasions during a period of 3 years :—

Date of sampling.	No. of cows in milk.	No. of cows giving milk below 8·5 per cent. solids-not-fat standard.	Percentage.	Solids-not-fat per cent. in bulk milk.
5/2/23	31	14	42	8·93
15/3/23	32	16	50	8·72
15/10/23	31	10	32	8·84
1/4/24	29	7	24	9·37
11/8/24	32	11	34	8·30
24/11/24	28	11	39	8·88
16/2/25	37	14	38	8·75
13/11/25	16	6	38	8·73

These variations in individual animals are due to inherent peculiarities, possibly of a physiological nature. Some of the other factors may contribute to the variation, but in this connection it must be remembered that the examples given are of cows that are members of herds, the remaining animals of which gave milk up to or above the standard, whilst the whole of the herd were kept under similar conditions as regards food, housing, etc.

(*u*) Mackintosh, J. (1929), "The Variation in the fat content of milk," Conference of Certified and Grade A (TT) Milk Producers' Association, Reading—"Dairyman," May, 1929, p. 490.

(*v*) Cranfield, H. T. (1927), "Variations of solids-not-fat content of milk," "Dairyman," June, 1927, p. 546.

It is most important that cows giving milk consistently below standard, either as regards fat or solids-not-fat, should be detected and moved out of the herd, or their milk mixed with that from other animals having a comparatively high fat or solids-not-fat content.

(3) **Period of lactation.**—The percentage of both fat and solids-not-fat varies with the time that elapses from calving. Generally speaking, the fat content is high immediately after calving, falling rapidly to the minimum 2 to 4 months afterwards, then gradually rising to the end of the lactation period. Considerable day-to-day fluctuations usually occur in the last month. The solids-not-fat are high at the commencement, falling slowly throughout the period until near the end, when a rather sudden rise takes place.

From the records of 3,283 specially selected cows in the hands of the British Dairy Farmers' Association, White and Drakeley^(w) tabulated the analyses of morning and evening milk of different breeds of cow during the first 200 days of the lactation period. Figures are given for each age group from 2 to 9 years, but the following extracts are for animals aged 5 years only. It should be pointed out that the cows were carefully prepared for show purposes, and they may possibly be somewhat superior to ordinary farm animals, although this is true more especially in regard to yield.

Composition of milk from various breeds, at different stages in the lactation period, of animals 5 years old.

Days of lactation.	Dairy Shorthorn.		Jerseys.		Guernseys.		British Friesians.		Ayrshires.	
	Fat.	S-N-F.	Fat.	S-N-F.	Fat.	S-N-F.	Fat.	S-N-F.	Fat.	S-N-F.
	%	%	%	%	%	%	%	%	%	%
15	4.24	9.29	5.44	9.55	4.93	9.35	4.08	9.12	4.60	9.34
20	4.11	9.18	5.22	9.40	4.80	9.29	3.95	9.03	4.44	9.19
30	3.94	9.06	5.00	9.30	4.72	9.24	3.78	8.89	4.18	9.00
40	3.81	9.00	5.00	9.28	4.71	9.22	3.68	8.82	4.02	8.93
50	3.74	8.99	5.01	9.28	4.72	9.19	3.59	8.80	3.88	8.85
60	3.69	8.98	5.04	9.28	4.75	9.19	3.55	8.79	3.83	8.81
70	3.66	8.98	5.10	9.28	4.79	9.19	3.54	8.79	3.80	8.79
80	3.64	8.98	5.14	9.29	4.80	9.19	3.55	8.79	3.79	8.79
90	3.63	8.98	5.19	9.29	4.83	9.20	3.58	8.79	3.78	8.79
100	3.66	8.98	5.24	9.29	4.87	9.21	3.64	8.79	3.78	8.79
110	3.72	8.99	5.29	9.29	4.89	9.22	3.71	8.79		
120	3.79	8.99	5.34	9.29	4.91	9.23	3.79	8.79		
130	3.86	9.01	5.39	9.29	4.93	9.24	3.88	8.79		
140	3.94	9.03	5.44	9.30	4.97	9.24	3.98	8.79		
150	4.04	9.06	5.49	9.30	5.00	9.25	4.06	8.80		
160	4.14	9.09	5.54	9.30	5.03	9.27	4.11	8.80		
170	4.24	9.14	5.59	9.30	5.06	9.29				
180	4.34	9.18	5.64	9.30	5.09	9.33				
190	4.44	9.24	5.69	9.30	5.10	9.39				
200	4.54	9.33	5.74	9.30	5.13	9.45				

(w) White, Margaret K., and Drakeley, T. J. (1928), "*Breed Standards and Point Adjustments for Age and Period of Lactation in Milking Trials*," Proc. World's Dairy Congress, 1928, pp. 244-75.

The condition of the cow at calving influences the subsequent yield and quality of milk. An animal in good condition will be more likely to maintain a good yield of higher quality than will a cow in poor condition.

In order to overcome the differences due to the lactation period it is necessary to arrange that the various cows in the herd calve at different times, so that the low-standard milk of some members of the herd is balanced by the correspondingly high-standard milk from others.

(4) **Age of animal.**—Generally speaking, the percentage of fat and solids-not-fat appears to decrease gradually with advancing age, after about the sixth or seventh year, when the maximum is reached. These variations are, however, usually of slight degree and their effect negligible on the mixed milk of a herd.

Tocher(*x*), as a result of examining the analyses of 676 individual cows' milk, found that the percentage of milk fat decreased from approximately 4.0 per cent. at the sixth year by about 0.5 per cent. during the next 6 or 7 years. With regard to solids-not-fat, he found the maximum to be 8.9 per cent. at 3 years, falling to 8.6 per cent. at 13 years.

As a result of the investigations of White and Drakeley(*w*) the following figures were obtained for various breeds. The percentages given are all of milk obtained 100 days after calving.

Age in years.	Dairy Shorthorns.		Jerseys.		Guernseys.		British Friesians.		Ayrshires.	
	Fat.	S-N-F.	Fat.	S-N-F.	Fat.	S-N-F.	Fat.	S-N-F.	Fat.	S-N-F.
	%	%	%	%	%	%	%	%	%	%
2	3.42	9.09	5.09	9.41	4.88	9.29	3.46	8.82	3.83	8.98
3	3.56	9.05	5.16	9.36	4.91	9.28	3.57	8.81	3.92	8.91
4	3.65	9.01	5.23	9.31	4.90	9.26	3.63	8.80	3.89	8.86
5	3.66	8.98	5.24	9.29	4.87	9.21	3.64	8.79	3.78	8.79
6	3.65	8.94	5.23	9.22	4.84	9.16	3.61	8.78	3.64	8.74
7	3.63	8.90	5.19	9.20	4.76	9.11	3.53	8.77	3.43	8.67
8	3.58	8.87	5.11	9.18	4.69	9.08	—	—	3.16	8.61
9	3.53	8.83	4.98	9.16	—	—	—	—	—	—

Although the fluctuations on account of age are slight and not likely to adversely affect the mixed milk of a herd, it is advisable to maintain a number of young cows in the herd, in order to counteract the influence of any older animals.

(5) **Health of cow.**—It is obvious that any diseased condition which interferes with the general state of an animal is likely to have some effect upon the yield and quality of the milk. Some diseases are more important than others in this

(*w*) See footnote, p. 129.

(*x*) Tocher (1925), *op. cit.* (see note 3(*l*) on p. 123), p. 53.

respect. Generally speaking, the fat content is increased and the yield reduced at the onset of disease.

In no case should milk from an animal suffering from disease be mixed with that from other cows in the herd.

(6) **Kind and quality of food.**—A large number of experiments have been carried out in order to ascertain what effect, if any, differences in food, both as regards quality and quantity, make on the quality of milk. Generally speaking, the results obtained indicate that, provided the food is reasonably adequate, variations in feeding have little effect upon the fat content and still less upon the solids-not-fat content. Under-feeding may adversely affect the yield.

According to Zwagerman(y) Dutch experience with Holland-Friesian cattle shows that with forced feeding the fat percentages can only be influenced 0·1 per cent. increase or decrease. 14,566 Friesian Herdbook Cows under normal feeding gave an average fat content of 3·34 per cent. against 3·24 per cent. where the feeding was insufficient.

Ragsdale and Turner(z) carried out experiments to ascertain the effect of sudden decreases in the amount of food. Three cows found to be on an excessive diet were given a standard ration for 10 days composed of the same ingredients. For the next 10 days the quantity of each foodstuff was halved; at the end of this period the original quantity was gradually given. The average results for the 3 cows are as follows:—

Period.	Average milk yield per day.	Average fat percentage.
	lbs.	
Heavy feeding	39·6	4·059
Standard feeding	36·7	3·985
Half standard feeding	27·2	4·453
Returning to heavy feeding	31·5	3·728

The above workers also draw attention to the fact that when cows are first turned out to grass there is a distinct increase in the fat percentage. This they attribute to the under-feeding which usually occurs, due to the relatively high water content of fresh pasture, resulting in a reduction of food constituents and partly to the increased exercise which occurs on grazing.

(y) Zwagerman, C. (1928), "*Data on the Lactation Records as a Basis for a Rational Breeding for Production*," Proc. World's Dairy Congress, 1928, pp. 238-9.

(z) Ragsdale and Turner (1923), "*The Effects of Under-feeding on Milk Secretion*," J. Dairy Sci., v. VI, p. 251.

With regard to individual cows, feeding certainly has an influence upon the yield and to a much less degree the fat content. This applies especially to the animal during the period 2 months prior to calving, until a few weeks or even months afterwards. Good feeding prior to calving is essential for the production of a high yield of good quality, and if such standard is maintained for some time after calving the above results will be maintained. In short, good management of the cow, both before and after calving, is necessary if the maximum quantity of high-quality milk is to be obtained and maintained for a reasonable length of time.

(7) **Interval between milkings.**—The interval between milkings is of great importance in relation to the composition of milk. Where the periods elapsing between the evening and morning, and morning and evening, milkings are equal, or practically so, very little difference in the fat and solids-not-fat content will occur. Owing, however, to factors over which the producer has little control, including labour, demands of the consumer or distributor, and transport, it rarely happens in practice that the intervals are equal, the night period usually exceeding the day period, in which case the fat percentage is less in the morning than in the evening. Little change appears to occur in regard to the percentage of solids-not-fat.

According to Mackintosh(a) the fat percentage is lowered 0.10 per cent. to 0.15 per cent. for each hour that the period between milking exceeds 12 hours, whilst it is increased 0.20 per cent. to 0.25 per cent. for each hour that the interval is under 12 hours. Mackintosh also found that difference occurred with individual cows, as shown by the following examples.

<i>Dairy Shorthorns.</i>	<i>Milking intervals.</i>	<i>Difference in fat content, p.m. above a.m.</i>
Firefly 3rd ..	16 and 8 hours	0.64 per cent.
Flora	15 and 9 hours	1.04 per cent.
Doll 2nd ..	15 and 9 hours	1.78 per cent.

According to Ling(b), of 7,507 samples of milk analysed at the Midland Agricultural College, of which 2,437 were from mornings and 5,070 from evenings milk, 23.3 per cent. of the former were below the 3 per cent. fat standard, but only 1.83 per cent. of the latter. In the majority of the cases of mornings milk below standard, the intervals between milking were excessive and a readjustment brought about an improvement.

There is little doubt that of all the factors influencing the composition of milk, the intervals between milking are of chief importance to the dairy farmer, as being most easily controlled.

(a) Mackintosh, J. (1929), *op. cit.* (see note (u) on p. 128), p. 491.

(b) Ling, Edgar R. (1930), "*Dairy Chemistry*," London, Chapman & Hall, p. 38.

In spite of the difficulties mentioned above, every effort should be made to make the milking intervals as nearly equal as possible. Failure to do so, coupled with other factors, such as a number of newly calved cows, together with new grass likely to lead to high yields, may result in the mornings milk being very near, if not actually below, the standard. In cases of deficiency in milk fat, this factor should receive first attention, as frequently an adjustment of the intervals between milking raises the percentage of fat from just below to above the legal requirements.

(8) **Efficiency of milker.**—This is an important factor, not only from the standpoint of the composition of milk, but also in regard to the yield of milk and possibly the health of the cow. Where milking is inefficiently performed and the udder is not properly stripped or completely emptied of milk, the fat percentage will be low, the yield of milk is rapidly interfered with and disease or injury of the udder may ultimately result.

The percentage of fat varies according to the period of milking. Milk drawn off at the commencement may contain less than 1 per cent. fat, whereas the strippings may consist of more than 9 per cent. fat. Ling(c) quotes the following figures obtained by Van Slyke :—

	<i>Cow No. 1.</i>	<i>Cow No. 2.</i>	<i>Cow No. 3.</i>
First portion ..	0·90 per cent.	1·60 per cent.	1·60 per cent.
Second portion ..	2·60 per cent.	3·20 per cent.	3·25 per cent.
Third portion ..	5·35 per cent.	4·10 per cent.	5·00 per cent.
Strippings ..	9·80 per cent.	8·10 per cent.	8·30 per cent.

Gilchrist(d), in 1912, obtained the following results of the analysis of milk obtained at various stages of milking :—

No. of cows.	5 a.m.			12.30 p.m.			6 p.m.		
	First drawn. (1 pt.)	Strippings.	Whole milking.	First drawn. (1 pt.)	Strippings.	Whole milking.	First drawn. (1 pt.)	Strippings.	Whole milking.
	%	%	%	%	%	%	%	%	%
11	1·3	3·6	2·3	3·1	5·3	4·2	3·4	3·9	3·6
13	1·4	3·8	2·7	1·9	6·5	4·8	3·5	4·9	4·4
14	1·2	3·8	2·9	2·1	7·8	3·8	3·0	7·1	4·5
16	0·6	6·8	2·6	0·7	9·1	4·0	2·4	5·7	4·6
18	1·4	6·8	3·4	3·5	7·6	5·4	5·5	8·9	6·0
35	1·6	7·3	3·3	2·1	4·3	4·5	4·4	3·8	4·1
36	1·3	5·9	3·4	1·8	5·3	3·4	2·8	4·8	4·0
Average per cow ..	1·26	6·03	2·94	2·17	6·56	4·30	3·57	5·59	4·46

(c) Ling, Edgar R. (1930), *op. cit.*, p. 40.

(d) Gilchrist, D. A. (1912), "Composition of first-drawn and last-drawn milk," Appendix V., Annual Report of the Intelligence Division, Ministry of Agriculture and Fisheries, 1912, Cmd. 6872.

Milking should be carried out as rapidly as possible, without disturbing the animal, and it must be thoroughly done, as it is clear from the figures given that any failure on the part of the milkers to thoroughly strip all the cows will almost invariably lead to milk deficient in fat.

Efficient milk recording is of value in this connection, being a check on the amount of milk normally given by each cow.

(9) **Climatic and weather conditions.**—Variations in composition of milk under this heading may usefully be divided under the following heads :—

- (i) Time of year ;
- (ii) Temperature ; and
- (iii) Sudden weather changes.

(i) *Time of year.*—Generally speaking, the percentages of fat and solids-not-fat in milk are higher in winter than in summer. In the former the yield is usually lower compared with the latter. A number of factors may, however, influence the milk, and it is difficult to accurately determine the effect of each.

In any case the effect of the time of year is slight and not of very great importance when considered alone. When dealt with in conjunction with temperature and weather conditions, food supply, etc., it may assume more importance.

(ii) *Temperature.*—As a rule, *low* temperature—colder weather—tends to *increase* the fat percentage, and a *high* temperature—warmer weather—tends to *lower* it. Ragsdale and Brody(*e*) found that there was an approximate increase of 0.15 to 0.20 per cent. in fat for a decrease of 10° F. in temperature. In an investigation by Hays(*f*) the indoor or outdoor temperature for 258 consecutive days was recorded, according as to whether the cows were in or out, together with the percentage of fat. The results obtained were as follows :—

No. of days.	Average temperature.	Average percent. of fat.
7	86.5° F.	3.171
50	79.2° F.	3.250
69	69.6° F.	3.389
48	60.5° F.	3.481
38	49.7° F.	3.505
35	40.1° F.	3.463
9	31.0° F.	3.465
2	24.5° F.	3.600

(*e*) Ragsdale and Brody (1922), "Effect of Temperature on the Percentage of fat in milk," J. Dairy Sci., v. V, p. 212.

(*f*) Hays (1926), "Effect of Environmental Temperature on the Percentage of fat in cow's milk," J. Dairy Sci., v. IX, p. 219.

These figures show that there is an increase in fat to about 40° F., but a slight decrease below that figure. The results were confirmed by Hays in a further experiment with two Jersey cows, as nearly identical as possible and kept under exactly similar conditions as regards feeding, milking, etc., except that the temperature was varied from time to time by artificial means. The results obtained are shown below:—

No. of days in trial.	Average temperature for period.	Average lbs. of milk per day.	Average per-cent. of fat for period.	Average per-cent. of fat neglecting first day of each period.
8	92.7° F.	20.8	5.388	5.178
4	80.0° F.	21.6	5.227	5.107
6	72.5° F.	20.5	5.149	5.163
4	60.9° F.	21.0	5.424	5.339
5	52.3° F.	21.3	5.646	5.582
6½	39.9° F.	20.2	6.099	6.283
5	27.0° F.	18.4	6.012	5.543

This investigation also showed that the fat content was higher on the first day of the change than on the subsequent days.

Cowsheds insufficiently ventilated and consequently stuffy, result in the fat percentage being lower, whilst a well-ventilated shed coupled with fresh water, efficient grooming and moderate exercise, results in maximum quality and yield.

(iii) *Sudden weather changes.*—Inasmuch as sudden changes in climatic conditions may affect the temperature, comfort, water and food supply, exercise, etc., of the animals, such changes may have an effect upon the composition of milk. Cranfield(g) records the following effect of changes in climatic conditions, from which it will be seen that the sudden change at the beginning of the second week appeared to lower the solids-not-fat percentage, but by the end of the third week it was again normal, apparently due to the cows becoming accustomed to the changed conditions. A further drop occurred in the fourth week, but there was a recovery again at the end of the month.

May, 1923.	Percentage of S-N-F.	General weather conditions.
1st	8.55	Temperature very high. Above normal.
3rd	8.68	Warm nights. Rainfall moderate.
4th	8.85	Sunshine moderate.
7th	8.40	Temperature fell during week. Below normal.
8th	8.55	Ground frosts. Snow and hail.
10th	8.24	Thunderstorms. Rainfall heavy.
11th	8.45	Sunshine moderate.

(g) Cranfield, H. T. (1927), *op. cit.* (see note (v) on p. 128), p. 547.

May 1923.	Percentage of S-N-F.	General weather conditions.
14th	8.79	Similar weather to preceding week.
15th	8.70	
21st	8.35	Similar weather to preceding two weeks.
22nd	8.44	
28th	8.51	Temperature still below normal. Rain-
29th	8.95	fall moderate. Sunshine scanty.

(10) **Excitement and exercise.**—The composition of milk is liable to fluctuation as a result of sexual excitement or other disturbing factors such as storms, etc. With regard to the former, Hooper and Bacon, quoted by Mackintosh(*h*), found an average drop in yield of 0.1 lb. on the day of most evident heat. In one case the fat content in the morning was 3.7 per cent., at night 1.9 per cent., and the following day 7.3 per cent. The variations in both yield and composition due to sexual excitement vary considerably with different animals, nervous cows being affected to a greater extent than less nervous animals.

The effect of abnormal conditions, such as storms, strange surroundings, etc., is also very variable, some cows being unaffected, whilst others show marked changes in yield and composition of their milk. For instance, the following figures indicate the number of cows giving milk below the 3 per cent. fat standard when exhibited at the Royal Agricultural Society's Shows(*i*):—

Show.	Number of cows.	Disqualified, milk containing less than 3 per cent. fat on average on morning and evening milking.	Number of cows giving milk containing less than 3 per cent. of fat on one morning.
Cambridge, 1922	.. 109	7	—
Newcastle, 1923	.. 92	13	47
Leicester, 1924	.. 83	16	43
Chester, 1925	.. 123	30	61

Owners of cows entered for show purposes knowing that their animals would be disqualified if the milk was below standard would be sure to enter only those cows known to be giving milk of the requisite quality. Hence, it may safely be assumed that the changed conditions of the showground were largely, if not solely, responsible for the fall in the fat percentage.

With reference to exercise, it has been found that, generally speaking, moderate exercise increases the fat content.

(*h*) Mackintosh, J. (1926), "Agricultural Research in 1926—Dairy Husbandry," Roy. Agric. Soc. of Eng., p. 43.

(*i*) Ministry of Agriculture and Fisheries (1930), "Variations in the Composition of Milk," Bulletin No. 16, H.M.S.O., p. 11.

Mackintosh(*k*) found increases in 4 cows as follows as a result of change from rest to exercise.

Plus 0.27 per cent.
 Plus 0.37 per cent.
 Plus 0.12 per cent.
 Plus 0.47 per cent.

Woodward(*l*) experimented with cows at rest and on exercise which consisted of walking 3 miles a day. In 20 out of 22 cases the fat percentage increased when the animals were changed from rest to exercise, and it decreased when changed from exercise to rest. The average results of two groups of 3 cows were as follows:—

Group 1.		Fat.
Rest period.	6 days	.. 5.25 per cent.
Exercise period.	6 days	.. 5.52 per cent.
Exercise period.	10 days	.. 5.28 per cent.
Rest period.	10 days	.. 4.97 per cent.

Group 2.		Fat.
Exercise period.	6 days	.. 5.07 per cent.
Rest period.	6 days	.. 4.95 per cent.
Rest period.	10 days	.. 4.80 per cent.
Exercise period.	10 days	.. 5.27 per cent.

(11) **Day-to-day variations.**—The milk from individual cows varies from day to day. This is especially so in regard to the fat content, but to a smaller extent with the solids-not-fat. These variations are particularly noticeable at the beginning and end of the lactation period.

With a herd of 30 to 35 cows Cranfield(*m*) found that the daily variation may easily extend to 1 per cent. fat and 1 per cent. solids-not-fat. The following table shows the number of times in which a variation of 0.5 per cent. to 0.75 per cent. was recorded, either in the fat or solids-not-fat content during a year's record of a herd.

Extent of variation.	Variation over—					
	1 day.		2 days.		3 days.	
	A.M.	P.M.	A.M.	P.M.	A.M.	P.M.
No. of times the variation exceeded—						
0.5 per cent. of fat ..	2	11	1	28	1	26
0.75 per cent. of fat ..	0	3	0	2	0	3
0.5 per cent. of S-N-F.	0	3	0	3	0	4
0.75 per cent. of S-N-F.	0	2	0	2	0	2

Total number of samples—A.M., 359 ; P.M., 362.

(*k*) Mackintosh, J. (1929), *op. cit.* (see note (*u*) on p. 128), p. 492.

(*l*) Woodward (1923), "Factors Influencing the Percentage of fat in milk,"

J. Dairy Sci., v. VI, p. 466.

(*m*) Cranfield, H. T. (1929), "Farmer and Stockbreeder," 21st October, 1929.

It has been found that the mixed milk of a herd of 24 cows may vary as much as 0·6 per cent. of fat or 0·87 per cent. of solids-not-fat between one milking and the next corresponding milking(n). In herds of less than the above the day-to-day variations may be expected to be greater than these figures.

The influence of this factor is of particular importance in regard to "appeal to cow" samples. The basis of such samples is that the composition of milk from any particular herd is uniform from day to day. In view of the above figures it seems a matter of some doubt whether such is in fact the case, with the result that the wisdom of taking samples of this kind is open to question. It is conceivable that the milk of a herd may, when sampled, be deficient in fat or solids-not-fat to a slight degree and that the farmer knowing it to be genuine milk requests that an "appeal to cow" sample be taken. This may be done and the milk found well above standard, in which case it will be presumed that the first sample was adulterated. In order to overcome the disadvantages attaching to the present method of taking "appeal to cow" samples, it seems desirable that more than one such sample should be taken in order to counteract the influence of these day-to-day variations.

(12) **Mixing of milk from different cows in the herd.**—It has been shown that the milk of different cows varies as a result of a number of factors. It is obvious, therefore, that unless care is taken to thoroughly mix the milk of the herd it is possible that milk deficient in fat or solids-not-fat from several cows may be mixed together, with the result that the whole will be below standard. In order that this may be avoided, it is imperative that the milk from the whole of the cows, or at least from a reasonable number, be thoroughly mixed. This applies particularly in the case of small herds and where milk is bottled.

Mackintosh(o) records the fat percentage in the milk of 10 cows in the order of milking as follows :—

Pearl	2·65 per cent. fat.
Ara. Peach 2nd ..	3·15 per cent. fat.
Lottie 2nd	3·05 per cent. fat.
Flora	3·05 per cent. fat.
Rosebud	3·6 per cent. fat.
Doll 2nd	3·1 per cent. fat.
R. White Rose ..	3·4 per cent. fat.
Firefly 3rd	3·8 per cent. fat.
Winsome 3rd	2·95 per cent. fat.
Dora	2·75 per cent. fat.

As to the effect of the method of sampling on the composition of milk, see *ante*, p. 72.

(n) Ministry of Agriculture and Fisheries (1930), *op. cit.*, p. 16.

(o) Mackintosh, J. (1929), *op. cit.* (see note (u) on p. 128), p. 492.

Summary.—It will be abundantly clear from a consideration of the factors likely to vary the composition of milk that it may be by no means a simple matter to detect the cause or causes of a deficiency, either in fat or solids-not-fat. Although the combined effect of these factors usually results in milk being up to the required standard, cases frequently occur where a temporary or permanent deficiency is only remedied after considerable investigation.

Whilst the primary duty of an inspector under the Food and Drugs Act is to discover cases of adulteration, he ought also to be in a position to advise in cases where genuine milk falls below the presumptive standard. Although genuine milk may be sold even if it is below the 3·0 per cent. fat or 8·5 per cent. solids-not-fat standards, milk producers should take every precaution to avoid their milk being of poor quality. If a particular factor is found to be the cause of poorness of the milk and the farmer neglects to take the necessary steps to remedy the matter, he ought to be held liable for the deficiency. In spite of the difficulties attendant upon the practical application of such a principle it must be remembered that in a number of the American States an absolute standard has been fixed and is in operation.

Where milk is produced for sale and is liable to the provisions of the Sale of Milk Regulations, the following points should be noted in order to ensure it being up to the standard laid down.

1—Individual peculiarities in a cow may result in milk below standard. Such animals require to be discovered and their milk carefully controlled by adding and mixing it with other milk of high quality.

2—The lactation periods of the cows in the herd should be so arranged as to have little or no effect upon the composition of the mixed milk.

3—A uniform supply of food of good quality is essential to maintain the cows in good condition so as to produce a high yield of milk of good quality. Variations in composition are liable to occur when any important change in food occurs, such as turning cows to grass or bringing them in for the winter. Generally speaking, changes in food do not permanently influence the composition of milk, although they may do so for short periods.

4—The intervals between milking should be as nearly equal as possible.

5—Milking should be carried out quickly, quietly and efficiently, care being taken to thoroughly remove all the strippings.

6—Cows giving high yields should be milked first in the morning and last at night.

7—Any disturbing factor likely to upset the cows may react upon the composition of the milk.

8—Thoroughly mix the milk of several cows, taking care to add that of low quality to that of high quality, so as to obtain mixed milk of uniform composition. This is especially important where milk is retailed in bottles.

9—When a sample of milk is being obtained for purposes of submission to the public analyst for analysis, the dairyman should see that the whole of the milk in the churn or can is thoroughly mixed in order that the sample may be truly representative of the whole.

10—Where an "appeal to cow" is to be made, a number of samples should be obtained with a view to obviating, as far as possible, day-to-day variations.

It must be remembered that the standards laid down in the Sale of Milk Regulations are presumptive and not absolute, and as genuine milk is not infrequently found to be below the standards, many so-called "appeals to cow" have been carried out. This is a procedure not always satisfactory, either to the producer or consumer, and there is an urgent need for a more exact method of detecting adulteration. At the present time a producer is liable to conviction when milk is below the presumptive standards if he is unable to prove that it has not been adulterated, even though, in fact, it is genuine milk.

DEFENCES AVAILABLE IN PROCEEDINGS IN RESPECT OF FOOD AND DRUGS NOT OF THE NATURE, SUBSTANCE OR QUALITY DEMANDED.

Section 4 of the Act of 1938, *infra*, sets out the defences available in proceedings under section 3 of that Act (see *ante*, p. 116):—

Section 4, Food and Drugs Act, 1938.—Defences available in proceedings under section 3.

In proceedings under the last preceding section it shall be a defence for the defendant to prove—

- (1) where some substance has been added to the food or drug in question—
 - (a) in the case of a food, that the substance is not, and its addition has not rendered the food, injurious to health; or, in the case of a drug, that the addition has not affected injuriously the quality or potency of the drug; and
 - (b) that the addition was not made fraudulently to increase the bulk, weight or measure, or conceal the inferior quality, of the food or drug; and

(c) either—

- (i) that the addition was required for the production or preparation of the food or drug as an article of commerce in a state fit for carriage or consumption ; or
 - (ii) that a label satisfying the requirements of the next succeeding section was attached to, or printed on the wrapper or container of, the article sold ;
- (2) where some constituent has been abstracted from the food or drug in question—
- (a) that the abstraction has not rendered the food injurious to health, or, as the case may be, affected injuriously the quality or potency of the drug, and was not made fraudulently to conceal the inferior quality of the food or drug ; and
 - (b) either—
 - (i) that the abstraction was required for the production or preparation of the food or drug as an article of commerce in a state fit for carriage or consumption ; or
 - (ii) that a label satisfying the requirements of the next succeeding section was attached to, or printed on the wrapper or container of, the article sold ;
- (3) where the food or drug in question is the subject of a patent in force, that it was supplied in the state required by the specification of the patent ;
- (4) where the food or drug in question contains some extraneous matter, that the presence of that matter was an unavoidable consequence of the process of collection or preparation ;
- (5) that the article supplied was a proprietary medicine and was supplied in response to a demand for that medicine ;
- (6) where the proceedings are in respect of diluted whisky, brandy, rum or gin, that the spirit in question had been diluted with water only and that its strength was still not lower than thirty-five degrees under proof :

Provided that—

- (a) none of the defences specified in paragraphs (1) to (4) of this section shall be available in the case of any food which does not comply with any relevant provisions contained in regulations made under this Act for prescribing the composition of, or prohibiting or restricting the addition of any substance to, food ; and
- (b) nothing in paragraph (6) of this section affects the provisions of section fourteen of the Finance Act, 1935, with respect to the dilution of spirits after computation of duty.

It has been held that the question of the fraudulent addition of substances to food—see paragraph (1)(b) of section 4, *supra*

—is a question of fact to be determined by the justices(*p*). It should be noted that the expression “*container*” in section 4 includes a package or receptacle of any kind, whether open or closed(*q*).

With regard to spirits, referred to in paragraph (6) of section 4, *supra*, “*proof spirit*” means spirit of such density that at 51° F. 13 volumes weighs the same as 12 volumes of water(*r*). A liquid 35° under proof contains 65 volumes of proof spirit and 35 volumes of water. Section 14 of the Finance Act, 1935(*s*), provides that if any spirits delivered in bottle form from a warehouse for home consumption are sold by a dealer in, or retailer of, spirits at a strength lower than that by reference to which the customs duty or the excise duty chargeable thereon was computed, he is, for each offence, liable on summary conviction to a fine not exceeding £5.

PROVISIONS WITH RESPECT TO LABELS.

Where it is desired to rely on a label—see paragraphs (1)(c)(ii) and (2)(b)(ii) of section 4 of the Act of 1938, *supra*—the provisions of section 5 of that Act, *infra*, apply.

Section 5, Food and Drugs Act, 1938.—Provisions as to labels.

(1) A label shall afford no defence under sub-paragraph (c)(ii) of paragraph (1) or sub-paragraph (b)(ii) of paragraph (2) of the last preceding section unless the following requirements are satisfied :—

- (a) the label must state explicitly what substance has been added to, or what constituent has been abstracted from, the food or drug ; and
- (b) it must be of adequate size, and have the notice of addition or abstraction distinctly and legibly printed and conspicuously visible.

(2) Notwithstanding anything in the preceding subsection, the requirements thereof shall, as respects a mixture, be deemed to be satisfied by a label which has been continuously in use without any material variation since the first day of January eighteen hundred and ninety-three and bears a statement to the effect that the article in question is mixed, or by a label which has been continuously in use without any material variation since the first day of October nineteen hundred and thirty-two and bears such a statement distinctly and legibly printed and unobscured by other matter on the label.

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- (*p*) *Liddiard v. Reece* (1878), 44 J.P. 233 ; 25 Digest 83, 114.
Star Tea Co., Ltd. v. Neale (1909), 73 J.P. 511 ; 25 Digest 83, 116.
Horder v. Meddings (1880), 44 J.P. 234 ; 25 Digest 83, 115.
Otter v. Edgley (1893), 57 J.P. 457 ; 25 Digest 86, 134.
Jones v. Jones (1894), 58 J.P. 653 ; 25 Digest 84, 127.
 - (*q*) Sect. 100, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 313.
 - (*r*) Spirits Strength Ascertainment Act, 1818 ; 16 Halsbury's Statutes 71.
 - (*s*) 28 Halsbury's Statutes 319

Section 6 of the Act of 1938, *infra*, deals with the use of labels and advertisements which describe incorrectly food or drugs.

Section 6, Food and Drugs Act, 1938.—Labels and advertisements describing incorrectly food or drugs.

- (1) A person who gives with any food or drug sold by him a label, whether attached to or printed on the wrapper or container or not, which falsely describes that food or drug, or is otherwise calculated to mislead as to its nature, substance or quality, shall be guilty of an offence, unless he proves that he did not know, and could not with reasonable diligence have ascertained, that the label was of such a character as aforesaid.
- (2) A person who publishes, or is a party to the publication of, an advertisement (not being such a label so given by him as aforesaid) which falsely describes any food or drug, or is otherwise calculated to mislead as to its nature, substance or quality, shall be guilty of an offence :

Provided that in proceedings under this subsection it shall be a defence for the defendant to prove either—

- (a) that he did not know, and could not with reasonable diligence have ascertained, that the advertisement was of such a character as aforesaid ; or
- (b) that, being a person whose business it is to publish, or arrange for the publication of, advertisements, he received the advertisement for publication in the ordinary course of business.

In any such proceedings as aforesaid against the manufacturer, producer or importer of the food or drug, it shall rest on the defendant to prove that he did not publish, and was not a party to the publication of, the advertisement.

As to the temporary suspension of this section, see *post*, p. 144.

There have been numerous cases relating to misleading labels, especially during the emergency period with its consequent food shortage and control. In order to deal with the situation arising as a result of the war emergency, the Government issued a White Paper^(t) in November, 1943, defining the policy it was proposed to adopt. It was pointed out that the Minister of Food is charged with the responsibility of providing the public with a supply of food which is adequate and satisfactory in quality to maintain the nation in health. This carries with it the obligation to protect the consumer against being misled in regard to foodstuffs which are offered for sale. The first step towards providing additional protection for the public was taken by the issue of the Food Substitutes (Control) Order, 1941^(u), which made it an offence, except under licence of the Minister of Food, to manufacture any product which purported to be a substitute for food. Where necessary, appropriate labelling was made a condition of the grant of a licence. The provisions of this Order are only applicable to

^(t) Cmd. 6482, H.M.S.O., November, 1943.

^(u) S.R. and O., 1941, No. 1606 ; amended by S.R. and O., 1942, No. 348.

those products coming within the definition of a food substitute. The Food and Drugs Act, 1938, makes provision for the fixing of food standards (see *post*, p. 161), but as the Act only came into operation in October, 1939, by which time the Ministry of Food was established, the Minister of Health—who was empowered by the Act of 1938 to do so—did not exercise his powers for the determination of food standards. Consequently, it was decided that the Minister of Food should be authorised to fix standards with the object of protecting the consumer against false and misleading claims in regard to food-stuffs, and to exercise certain of the powers already granted to the Minister of Health(*v*) and the Board of Trade(*w*). The former enables the Minister of Health to make regulations stipulating the manner in which foods are to be labelled and regulating the composition of food; the latter empowers the Board of Trade to make regulations requiring pre-packed foods to be labelled with an indication of their weight or measure.

In fulfilment of the above policy the Defence (Sale of Food) Regulations, 1943(*x*), were issued, involving the following changes in the law:—

1—Section 6 of the Act of 1938 (see *supra*) was suspended from 1st January, 1944, so far as it relates to food, and re-enacted in a modified form, with the effect that—

- (i) the display of a label which falsely describes any food exposed for sale is now an offence, whereas under the Act no offence was committed until a sale was made(*y*);
- (ii) whereas, under the Act, it is an offence to give a label, or to publish or to be a party to the publication of an advertisement, which falsely describes or is otherwise calculated to mislead as to the nature, substance or quality of a food, this offence will now specifically include giving a label or publishing an advertisement which misleads as to the nutritional or dietary value of a food(*z*).

2—The necessary powers to control the labelling and composition of food are granted to the Minister of Food, who is authorised to proceed by Order(*a*);

3—An additional power, not contained in previous legislation, is conferred on the Minister of Food, enabling him by Order to restrict the making in advertisements of food of claims or suggestions of the presence of vitamins or minerals(*a*);

(*v*) Sect. 8(1)(*b*) and (*c*), Food and Drugs Act, 1938; 31 Halsbury's Statutes 258; and see *post*, p. 159.

(*w*) Sect. 9(1)(*c*), Sale of Food (Weights and Measures) Act, 1926; 20 Halsbury's Statutes 422.

(*x*) S.R. and O., 1943, No. 1553, amended by S.R. and O., 1944, Nos. 42 and 654; and S.R. and O., 1945, No. 1454.

(*y*) *Ibid.*, Art. 1(1).

(*z*) *Ibid.*, Art. 1(2).

(*a*) *Ibid.*, Art. 2.

4—The Minister of Food becomes an enforcing authority in addition to those already acting under the statutes referred to above(b) ; and

5—Except in such cases as Orders under the Regulations may provide, the consent of the Minister of Food is required before proceedings under the Regulations may be instituted by a food and drugs authority(c).

In order to obtain technical assistance in fixing appropriate food standards in cases where it is urgently necessary as a result of wartime emergency conditions, the Minister of Food appointed an Advisory Committee consisting of representatives of the Ministries of Food and Health, and the Government Chemist's Department, and of public analysts nominated by the Society of Public Analysts and other Analytical Chemists. In fixing standards full consideration is given to responsible trade opinion. In accordance with the powers conferred upon him by the Regulations of 1943, *supra*, the Minister of Food has made the following Orders :—

- Food Standards (General Provisions) Order, 1944(d) ;
- Food Standards (Mustard) (No. 2) Order, 1944(e) ;
- Food Standards (Self-raising Flour) Order, 1946(f) ;
- Food Standards (Shredded Suet) Order, 1944(g) ;
- Food Standards (Baking Powder and Golden Raising Powder) Order, 1944(h) ;
- Food Standards (Preserves) Order, 1944(i) ;
- Food Standards (Liquid Coffee Essences) Order, 1945(k) ; and
- Food Standards (Salad Cream and Mayonnaise) Order, 1945(l).

Particulars of these food standards Orders will be found on pp. 163, *post, et seq.*

With regard to labelling, Orders made under the Regulations provide, in general, that pre-packed articles of food must bear a label indicating the following particulars :—

- 1—Name and address of the packer ;
- 2—Common or usual name (if any) of the food ;
- 3—Minimum quantity of food contained in the package ; and
- 4—Common or usual names (but not the proportions) of ingredients of the food.

The disclosure of ingredients is not necessary in the case of foods for which a standard is prescribed. With a view to the protection of the public in connection with claims made in respect of foods said to contain vitamins and minerals, the Minister may by order require such foods to be labelled so as to disclose the quantity of such protective products in foods.

(b) *Ibid.*, Art. 5(1)(a).

(d) S.R. and O., 1944, No. 42.

(f) S.R. and O., 1946, No. 157.

(h) S.R. and O., 1944, No. 46.

(k) S.R. and O., 1945, No. 389.

(c) *Ibid.*, Art. 5(1)(c).

(e) S.R. and O., 1944, No. 275.

(g) S.R. and O., 1944, No. 45.

(i) S.R. and O., 1944, No. 842.

(l) S.R. and O., 1945, No. 1177.

Labelling of Food (No. 2) Order, 1944 (m).—This Order revokes and re-enacts the provisions of the Labelling of Food Order, 1944(n), and altered the date of operation as follows:—

- | | |
|--|----------------------|
| i—as respects advertisements— | 1st January, 1945 ; |
| ii—as respects sales by retail— | 1st November, 1945 ; |
| iii—as respects sales by manufacturers or packers, other than sales by retail— | 1st May, 1945 ; and |
| iv—as respects other sales— | 1st August, 1945(o). |

The main provisions of the Labelling of Food (No. 2) Order, are as follows :—

Retail sale of pre-packed goods.—No person may sell by retail(p) or display for sale by retail any pre-packed(q) food(r), unless there appears on a label marked on or securely attached to the wrapper or container(s) a true statement as to the following matters:—

- (i) Name of either the packer or the labeller of the food and an address at which such person carries on business :
Provided that—

- (a) where the food is packed or labelled on behalf of or on the instructions of another person and such other person carries on business at an address in the United Kingdom, the statement may specify the name and the said address of that other person instead of the name and address of the packer or labeller, as the case may be ;
- (b) it shall be sufficient if instead of the particulars specified in this paragraph there appears prominently on the label a trade mark (other than a certification trade mark) of which there is in the Trade Marks Register, kept under the authority of the

(m) S.R. and O., 1944, No. 1447, amended by S.R. and O., 1945, Nos. 464, 1178 and 1550.

(n) S.R. and O., 1944, No. 738.

(o) Third Sched., Labelling of Food (No. 2) Order, 1944 ; S.R. and O., 1944, No. 1447.

(p) “Retail sale” means any sale to a person buying otherwise than for the purpose of resale, but does not include a sale to a caterer for the purposes of his catering business, or a sale to a manufacturer for the purposes of his manufacturing business—*ibid*, Art. 1(1).

(q) “Pre-packed” means packed or made up in advance ready for retail sale in a wrapper or container, and—

- (a) where any food packed or made up in a wrapper or container is found on any premises where such food is packed, kept or stored for sale, the food shall be deemed to be pre-packed unless the contrary is proved, and it shall not be sufficient proof of the contrary to show that the food had not been labelled in accordance with the provisions of this Order ;

- (b) the expression “pre-packed” shall be construed accordingly ; *ibid*, Art. 1(1).

(r) “Food” means any article used as a food or drink for human consumption and includes any substance which is intended for use in the composition or preparation of food, any flavouring, sweetening matter or condiment, and any colouring matter intended for use in food, and an article shall not be as a medicine ; *ibid*, Art. 1(1).

(s) Any reference in this Order to a label marked on a wrapper or container shall be construed as including a reference to any legible marking on the wrapper or container however effected ; *ibid*, Art. 1(2).

Trade Marks Act, 1938, a subsisting entry in respect of such food, and if there is associated therewith on the label the words "Registered Trade Mark" (Art. 2(1)).

- (ii) In the case of a food consisting of one ingredient, the appropriate designation of the ingredient (Art. 2(3)(a)).
- (iii) In the case of a food made of two or more ingredients, the common or usual name (if any) of the food and the appropriate designation of each ingredient, and, unless the quantity or proportion of each ingredient is specified, the ingredients shall be specified in the order of the proportion in which they are used, the ingredient used in the greatest proportion (by weight) being specified first :

Provided that—

- (a) it shall not be necessary to state that the food contains water ;
- (b) where a food contains an ingredient which is made from two or more constituents, the appropriate designation of those constituents shall be so specified and it shall not be necessary to specify the appropriate designation^(t) of that ingredient (Art. 2(3)(b)).
- (iv) The minimum quantity of the food in the wrapper or container expressed in terms either of net weight or of measure :

Provided that in any case where the weight of the wrapper or container is permitted by section 4 of the Sale of Food (Weights and Measures) Act, 1926^(u), to be included in the weight purported to be sold and complies with the requirements of that section, it shall be sufficient compliance with this paragraph if the statement specifies the minimum weight of the food with its wrapper or container (Art. 2(4)).

Exemptions.—The following foods are exempt from the above provisions relative to labelling as are specified in the second column to the extent shown in the third column^(uu) :—

TABLE A.

Column 1.	Column 2.	Column 3.
Description of Food.	Provision of Article 2 from which exempt.	Extent of exemption.
1. Any food specified in Table B below, when pre-packed for sale as such.	The whole Article.	Wholly exempt.
2. National flour Sugar Yeast Unfermented apple juice and soft drinks in solid, semi-solid or powder form.	Paragraph (2)	Wholly exempt.

^(t) " *Appropriate designation* " means a name or description, being a specific and not a generic name or description, calculated to indicate to a prospective purchaser the true nature of the ingredient or constituent to which it is applied—*ibid*, Art. 2(3).

^(u) 20 Halsbury's Statutes 419.

^(uu) Sched. 1, Labelling of Food (No. 2) Order, 1944 ; S.R. and O., 1944, No. 1447.

Column 1.	Column 2.	Column 3.
Description of Food.	Provision of Article 2 from which exempt.	Extent of exemption.
3. Specified foods within the meaning of the Meat Products, Canned Soup and Canned Meat (Control and Maximum Prices) Order, 1944(v), except meat paste or fish paste, ox or calf tongue and soup.	Paragraph (2)	Exempt so far as is necessary to enable the product to comply with proviso (ii) of Article 14 of the Order in Column 1.
4. Spices— (a) when pre-packed for sale as such, other than spices consisting of a single ingredient; (b) when forming an ingredient of some other food; Any deodorised fatty oil, whether hydrogenated or not, when forming an ingredient of some other food. Colourings, when forming an ingredient of some other food.	Paragraph (3)	Exempt to the extent that they may be designated as spices, colourings, edible oil or edible fat (as the case may be) without further specification as to their common or usual name or as to composition.
5. Colourings, when pre-packed for sale as such.	Paragraph (3)	Exempt to the extent that the colouring ingredients may be designated without further specification— (a) unless of synthetic origin, as "colour," or (b) if of synthetic origin, as "synthetic colour" or "artificial colour."
6. Flavourings, as defined at the foot of this Table— (a) when pre-packed for sale as such, other than flavourings consisting of a single ingredient; (b) when forming an ingredient of some other food.	Paragraph (3)	Exempt to the extent that the ingredients need not be specified.
	Paragraph (3)	Exempt to the extent that they may be designated either as "flavourings" or as "flavouring essences" or by their common or usual name without further specification as to composition.

Column 1.	Column 2.	Column 3.
Description of Food.	Provision of Article 2 from which exempt.	Extent of exemption.
7. Speciality flour whether pre-packed for sale as such or forming an ingredient of some other food.	Paragraph (3)	Exempt to the extent that ingredients or constituents which for the purposes of the Flour Order, 1944, are authorised ingredients of national flour or "M" flour need not be specified, if they are present only in quantities not greater than those in which they are customarily present in national flour or "M" flour.
8. Preservatives as defined in the Public Health (Preservatives, etc., in Food) Regulations, 1925— (a) pre-packed for sale as such, or (b) forming an ingredient of one of the foods specified in paragraph 1 of the Second Schedule to those Regulations.	Paragraph (3)	Wholly exempt but the label must comply with the requirements of the Public Health (Preservatives, etc., in Food) Regulations, 1925–1940.
9. Any food specified in Column 1 of Table C below if the food is pre-packed for sale as such and complies as regards composition with the requirements of the Order specified in relation thereto in Column 2 of that Table. Any of the following, when pre-packed for sale as such :— Biscuits Condensed milk as defined by the Public Health (Condensed Milk) Regulations, 1923 and 1927. Curry Powders Ice-cream(w) National flour Pickles and sauces, other than sandwich spread, salad sauce and any other salad dressing (x)	Paragraph (3)	Exempt to the extent that the ingredients need not be specified.

(w) Added by S.R. and O., 1945, No. 464.

(x) Amended by S.R. and O., 1945, No. 1178—fully operative on 1st May, 1946.

Column 1.	Column 2.	Column 3.
Description of Food.	Provision of Article 2 from which exempt.	Extent of exemption.
<p>10. Any of the following, when forming an ingredient of some other food :—</p> <p>Any food specified in entry No. 9 in this column or in Table B below</p> <p>" M " flour</p> <p>Intoxicating liquor (y)</p> <p>Any preparation which is the subject of a monograph in the 1932 or any later issue of the British Pharmacopœia, including the Addenda thereto, or in the formulary section of the 1934 or any later issue of the British Pharmaceutical Codex, including supplements thereto</p>	<p>Proviso (ii) to paragraph (3)</p>	<p>Exempt to the extent that it may be designated by its appropriate designation without specifying the appropriate designation of its constituents.</p>
<p>11. Biscuits when sold or to be sold by the packet or by the piece at a price not exceeding 3d. per packet or piece</p> <p>Condensed milk, as defined by the Public Health (Condensed Milk) Regulations, 1923 and 1927(z)</p> <p>Dried Milk, as defined by the Public Health (Dried Milk) Regulations, 1923 and 1927 (a), including sweetened or modified dried milk, and compounded dried milk</p> <p>Standard saccharin tablets</p> <p>Sweetening tablets</p>	<p>Paragraph (4)</p>	<p>Wholly exempt.</p>

(y) Added by S.R. and O., 1945, No. 1550; this provision came into operation as regards retail sales on 1st April, 1946, and other sales on 1st February, 1946.

(z) S.R. and O., 1923, No. 509, and S.R. and O., 1927, No. 1092.

(a) S.R. and O., 1923, No. 1323, and S.R. and O., 1927, No. 1093.

Note.—For the purposes of entry No. 6 above, the expression "flavouring" means any product which complies with the following conditions :—

- (a) it must have aromatic properties ;
- (b) where it is an ingredient of any food it shall have been added primarily for flavouring purposes and where it is packed for sale as such it shall be intended for use primarily for such purposes ; and
- (c) it shall consist of an essential oil, natural gum, gum resin, oleo-resin, a chemical having flavouring property, or any vegetable extractive, or a mixture of any of these, and it may also contain one or more of the following (but no other) ingredients :—
 - (i) fruit juice ;
 - (ii) such other substances as are reasonably necessary to produce a solid, a solution or an emulsion from the aforementioned ingredients ;

but the expression shall be deemed not to include any preparation of yeast, coffee or chicory, any soft drink, or any substance prepared by the hydrolysis of protein-containing materials.

TABLE B.

(Foods wholly exempt from Article 2 when pre-packed for sale as such and partly exempt when forming an ingredient of some other food.)

Bread (not including bread-crumbs).

Butter and milk-blended butter.

Cheese, including processed cheese, blue vein, soft curd or cream cheese and cheese made from milk other than cow's milk.

Compound cooking fat.

Flour confectionery.

Intoxicating liquor of the following descriptions, that is to say, spirits containing more than 40 per cent. of proof spirit, wine imported into the United Kingdom, beer, porter and any product sold under the description cider or perry(b).

Liquid cow's milk (other than condensed milk).

Margarine (not including vegetarian butter).

Meat pies.

Soft drinks, if specified in Part I of the First Schedule to the Soft Drinks Order, 1943(c).

Still spa water.

Sugar confectionery, chocolate and chocolate confectionery.

(b) Amended by S.R. and O., 1945, No. 1550 ; this provision came into operation as regards retail sales on 1st April, 1946, and other sales on 1st February, 1946.

(c) S.R. and O., 1943, No. 838.

TABLE C.

(Foods of which the ingredients need not be specified, but the food must comply as regards composition with the requirements of the Orders in Column 2.)

Column 1.	Column 2.
Any food for which a standard is prescribed by an Order under Regulation 2 of the Defence (Sale of Food) Regulations, 1943	The Order prescribing the standard.
Canned fruit and canned vegetables if specified in Part I of the First Schedule to the Order in Column 2(d)	The Canned Fruit and Vegetable Order, 1945 (e)(f).
Christmas puddings	Order, dated September 11, 1943, prescribing appointed days under the Manufactured and Pre-packed Foods (Control) Order, 1942, and granting a General Licence thereunder (S.R. and O. 1943 No. 1318)(g).
Fish cakes	The Fish Cakes (Maximum Prices) Order, 1943(h).
Meat or fish paste (canned or otherwise)	The Meat Products, Canned Soup and Canned Meat (Control and Maximum Prices) Order, 1944(i).
Meat roll or galantine (canned or otherwise)	
Canned ready or prepared meal	
Canned soup	
Beef sausages, pork sausages, slicing sausage, beef sausage meat and pork sausage meat (other than canned)	
Standard saccharin tablets	The Saccharin (Control and Maximum Prices) Order, 1944(k).
Sweetening tablets	

(d) Apples (solid pack); apples (in syrup); apples and blackberries (mixed); cherries (May Duke, Morello, Kentish Red, Flemish Red) and plums (including damsons and greengages); blackberries, gooseberries and loganberries; rhubarb; beans (stringless or runner); beans (in tomato sauce); beans (broad), beetroot, carrots, celery, macédoine, parsnips and turnips; potatoes (other than mashed); peas (fresh-picked garden); peas other than fresh-picked garden (soaked and scalded); spinach: leaf and puree; and vegetable salad (with mayonnaise)—First Schedule, Canned Fruit and Vegetables Order, 1945; S.R. and O., 1945, No. 460.

(e) S.R. and O., 1945, No. 460.

(f) This entry is substituted by S.R. and O., 1945, No. 464, which is fully operative on 30th April, 1946.

(g) S.R. and O., 1923, No. 1318.

(i) S.R. and O., 1944, No. 763.

(h) S.R. and O., 1943, No. 1593.

(k) S.R. and O., 1944, No. 69.

The provisions relative to the labelling of food do not apply—

- (a) to any food packed in advance by a retailer in a wrapper or container on the premises where it is sold by him, provided that the exemption contained in this subparagraph shall not apply if the wrapper or the container or any label given with the food bears any words referring in any way to the food other than such as are necessary to identify the food or to indicate the quantity or price thereof ;
- (b) to any food imported on government account which is still contained in the wrapper or container in which it was so imported ;
- (c) to any food packed specially for consumption by His Majesty's Forces or the Forces of any of His Majesty's Allies or Co-belligerents ;
- (d) to any assortment of foods packed for sale as a meal and ready for consumption without cooking, heating or other preparation ;
- (e) to any food intended at the time of sale for export from the United Kingdom or for use as ships' stores (Art. 2(5)).

Where any food is pre-packed in a wrapper or container containing less than one-half of an ounce or less than one-half of a fluid ounce, and owing to insufficient space on the wrapper or container it is not reasonably practicable for all the particulars specified above to appear on the label, it is only necessary to specify such of those particulars as it is reasonably practicable to specify, in the following order of priority—the particulars in paragraphs (3)(a) and (3)(b) of Article 2 (see *ante*, p. 147) first, and those in paragraph (4) next (see *ante*, p. 147) (Art. 2(6)).

Special provisions as to intoxicating liquor(*l*).—No person may sell or have in his possession for sale intoxicating liquor produced in the United Kingdom described in a label, whether attached to or printed on the wrapper or container or not—

- (i) by any name or words calculated to indicate either directly or by ambiguity, omission or inference, that the liquor is or resembles imported wine or is a substitute for or has the flavour of imported wine, unless such liquor, in so far as it is derived from fruit, is derived exclusively from grapes ; or
- (ii) (in the case of liquor derived wholly or partly from fruit other than grapes) by the use of the word " wine," unless that word is immediately proceeded in identical lettering, by a word or words accurately specifying the description of fruit or fruit product used(*m*).

(*l*) "*Intoxicating liquor*" means spirits, wine, beer, porter, cider, perry and sweets and any fermented, distilled or spirituous liquor which cannot be lawfully sold without an excise licence—Art. 1(a), S.R. and O., 1945, No. 1550.

(*m*) Added by S.R. and O., 1945, No. 1550 ; this provision came into operation as regards retail sales on 1st April, 1946, and other sales on 1st February, 1946.

The provisions of Article 2(3)(a), 2(3)(b) and 2(4) (see *ante*, p. 147) do not apply to intoxicating liquor pre-packed for sale as such, but in the case of such liquors (other than those wholly exempt by virtue of the First Schedule to the Order, see *ante*, p. 147), the statement must also include, except in the case of spirits, the appropriate designation of the product and in every case such one of the following declarations as may be applicable or such other declaration substantially to the like effect as may be allowed by the Minister of Food^(m)—

Paragraphs (3) and (4) of this Article shall not apply to intoxicating liquors pre-packed for sale as such, but in the case of such intoxicating liquors (other than those wholly exempt from the provisions of this Article by virtue of the First Schedule to this Order) the said statement must also include, except in the case of spirits, the appropriate designation of the product and in every case such one of the following declarations as may be applicable or such other declaration substantially to the like effect as may be allowed by the Minister :—

- (i) in the case of liquor (other than spirits) which, in so far as it is derived from fruit, is derived exclusively from one variety of fruit :—

FRUIT BASIS EXCLUSIVELY (x)
ALCOHOL CONTENT NOT LESS THAN (y)

- (ii) in the case of liquor (other than spirits) derived from more than one variety of fruit :—

FRUIT BASIS (x) AND (x)
ALCOHOL CONTENT NOT LESS THAN (y)

- (iii) in the case of liquor (other than spirits) which is not derived either wholly or in part from fruit :—

NOT MADE FROM FRUIT
ALCOHOL CONTENT NOT LESS THAN (y)

- (iv) in the case of spirits :—

ALCOHOL CONTENT NOT LESS THAN (y)

The declaration shall be completed by inserting at (x) in cases (i) and (ii) a word or words accurately specifying the description of fruit or fruit products as used by the manufacturer of the liquor and at (y) in each case the minimum alcohol content expressed either as a percentage by volume or as a percentage of proof spirit, and followed immediately by the words "PER CENT. BY VOLUME" or "PER CENT. PROOF SPIRIT" as the case may be.

(m) See footnote, p. 153.

In case (ii) the fruit or fruit products used shall be specified in the order of the proportion in which they were used, that used in the greatest proportion (by weight) being specified first. In every case, the declaration shall be printed in dark block type not less than $\frac{1}{8}$ inch in height upon a light-coloured ground and shall be enclosed by a surrounding line and no matter other than that hereinbefore described shall be printed within such surrounding line.

For the purposes of this paragraph—

- (a) “ appropriate designation ” means a name or description, being a specific and not a generic name or description, calculated to indicate to a prospective purchaser the true nature of the product to which it is applied ;
- (b) “ fruit ” includes rhubarb ;
- (c) intoxicating liquor shall be deemed not to be derived from any fruit which is present therein only in insignificant quantities.

Other important provisions are :—

Sales of pre-packed food otherwise than by retail.—Pre-packed food sold otherwise than by retail must either be labelled as required by Article 2 of the Order (see *ante*, p. 146), or if delivered to the purchaser unlabelled, an invoice or other document must be delivered to the purchaser by the seller within 14 days, containing a statement of the necessary particulars specified in Article 2(3) and (4) (see *ante*, p. 147) (Art. 3).

Directions and licences.—The provisions of the Labelling of Food (No. 2) Order are subject to any direction or licence or authorisation given or granted by the Minister of Food (Art. 14). In accordance with this provision the Minister made an Order(n) exempting from the provisions of Article 2(3) (see *ante*, p. 147) *custard powder, free-running salt and iodised salt*, to the extent that the ingredients of such foods need not be specified, but this exemption ceases to have effect as regards sales by retail or display for sale by retail on 30th April, 1946.

Defacing of labels.—It is an offence to remove, alter, deface or render illegible any statement upon a label (Art. 4).

Special requirements where the presence of vitamins or minerals claimed.—It is an offence to sell food with a label which makes a general claim that vitamins or minerals are present in the food, unless the food contains one or more of the vitamins or minerals specified below, and the label must specify in the manner shown the minimum quantity of every such substance contained in each ounce or fluid ounce of the food (Art. 5(1)).

The Second Schedule provides :—

PART I.

VITAMINS.

Column 1.	Column 2.
Substance.	To be calculated as—
<i>Group 1.</i>	
Vitamin A	International units of vitamin A.
<i>Group 2.</i>	
Carotene	International units of vitamin A, on the basis that 0.6 microgram of beta-carotene is equivalent to one international unit of vitamin A.
<i>Group 3.</i>	
Vitamin B1	} Milligrams of aneurin hydrochloride.
Aneurin	
Aneurin hydrochloride	
Thiamin	
Thiamin hydrochloride	
<i>Group 4.</i>	
Vitamin B2	} Milligrams of riboflavin.
Riboflavin	
<i>Group 5.</i>	
Nicotinic acid, nicotinic acid amide and their active derivatives	} Milligrams of nicotinic acid or the chemically equivalent quantity of nicotinic acid in milligrams.
Niacin	
Niacinamide	
Nicotinamide	
<i>Group 6.</i>	
Vitamin C	} Milligrams of ascorbic acid.
Ascorbic acid	
<i>Group 7.</i>	
Vitamin D	International units of vitamin D.
<i>Group 8.</i>	
Vitamin D2	} International units of vitamin D.
Calciferol	
<i>Group 9.</i>	
Vitamin D3	International units of vitamin D.

The quantity of any substance specified in the first column of the above Table must be calculated in the manner prescribed in relation thereto in the second column, but it shall not be necessary to specify this quantity in terms of the substance named in the second column. It shall be sufficient if such quantity is specified together with a reference to any of the substances in the same group as named in the first column, as if all the names in the group were synonymous. Carotene may be referred to either as Carotene or as vitamin A; vitamin D2, Calciferol and vitamin D3 may be referred to as such or as vitamin D.

PART II.

MINERALS.

Column 1.	Column 2.
Substance.	To be calculated and specified as—
Calcium	Milligrams of calcium.
Iodine	Micrograms of iodine.
Iron	Milligrams of iron.
Phosphorus	Milligrams of phosphorus.

(Second Schedule.)

The above provisions relative to vitamins and minerals do not apply to—

- (a) fruit and vegetables, including fruit and vegetables which have been preserved by freezing or by gas or cold storage or by any other method of storage, but excluding fruit or vegetables which have been canned or bottled or preserved otherwise than as aforesaid ;
- (b) liquid cow's milk (not including condensed milk) ;
- (c) shell eggs ;
- (d) fish of any description, including shellfish and processed fish, but not including canned or bottled fish or any manufactured product containing fish ;
- (e) any food served by a caterer as a meal or part of a meal in the course of his catering business (Art. 5(3)).

The following statement was issued by the Ministry of Food(o) in the light of recommendations by the Medical Research Council, as a guide to food traders in framing labels and advertisements in which claims to the presence of vitamins and/or minerals in food, pre-packed or otherwise, are made :—

Ministry of Food.**Food Labels and Advertisements.****Claims Regarding Vitamin and Mineral Contents.**

“ Where a food advertisement or label claims or suggests that the food contains vitamins or minerals it must, under the Labelling of Food (No. 2) Order, 1944, disclose the quantity of each of the vitamins or minerals claimed to be present. A mere disclosure of the quantity, however, is not sufficient to prevent the advertisement or label from being misleading within the meaning of Regulation 1 of the Defence (Sale of Food) Regulations, 1943, if statements or suggestions are made in it which imply that the food has a nutritional or dietary value in consequence of the presence of those vitamins or minerals which is in fact not warranted by the quantities present.

(o) Issued with Circular FSL/14/45, Ministry of Food, 31st July, 1945.

- " A decision as to whether any particular statement is misleading can, of course, be given only in a Court of Law, but to assist traders and, indeed, in response to many requests from traders for guidance in preparing their advertisements and labels, the Ministry of Food has prepared a statement which is intended to indicate the limits of what may reasonably be claimed for a food according to the quantity of vitamins or minerals it contains.
- " The dietary value of vitamins and minerals obviously depends not only on the amount present in a given quantity of the particular food, but on the amount present in that quantity which a consumer takes in a day. In other words, the amount which an average consumer may reasonably be expected to consume daily should contain not merely a significant quantity of the vitamin or mineral in question, but a quantity sufficient in the light of modern nutritional science to justify whatever reference is made to it in the advertisement or on the label.
- " The statement, which is given below, has been prepared after consideration of recommendations by the Medical Research Council, and the Ministry of Food suggests that it should form a code of practice to ensure that references in advertisements and labels are not misleading.

Suggested Code of Practice in framing Labels and Advertisements.

- " 1—Unless the amount of the food that would ordinarily be consumed in one day contains at least *one-sixth of the daily requirement* of the vitamin or mineral—
- (a) no claim based on its presence should be made, and
 - (b) no reference to its presence is justified in any advertisement for the general public, or on any label.
- (The inclusion of a mineral salt in the statement of ingredients required by the Labelling of Food Order will not of itself be regarded as implying the presence of a scheduled mineral.)
- " 2—Unless the amount of the food that would ordinarily be consumed in one day contains at least *one-half of the daily requirement* of the vitamin or mineral—
- no claims are justified which imply that the food is a " rich " or " excellent " source of the vitamin or mineral.
- " 3—Unless the amount of the food that would ordinarily be consumed in one day contains at least *the full daily requirement* of the vitamin or mineral—
- no reference is justified to the value of the food for the prevention or cure of disease due to the lack of the vitamin or mineral present in the food.
- " 4—Claims based on the presence of more than one vitamin or mineral should not be made unless each such vitamin or mineral is present in the proportion necessary to justify the claim.
- " 5—There is no evidence of a deficiency of phosphorus in the ordinary mixed diet of this country. Statements in advertisements or on labels suggesting the contrary or that it is desirable to supplement the dietary phosphorus intake should not be made.
- " 6—The following table, which includes the figures laid down by the Third Session of the Technical Commission on Nutrition, 1937 of the League of Nations Health Organisation, shows the

normal daily requirement of the vitamins and minerals scheduled in the Labelling of Food Order—

Vitamin A ..	3,000 I.U.	Calcium ..	0.75 gram.
Vitamin B1 ..	300 I.U.	Iodine ..	0.1 mg.
Vitamin B2 ..	1.8 mg.	Iron ..	10.0 mg.
Nicotinic acid	12.0 mg.	Phosphorus ..	0.75 gram.
Vitamin C ..	30.0 mg.		
Vitamin D ..	500 I.U.		

The statement refers to the foods commonly consumed by normal healthy adults and may not in all cases be applicable to foods used for special purposes."

Defences.—It is a defence in respect of an offence with respect to labelling, if the defendant proves—

- (a) that he purchased the food, in the wrapper or container in which he sold it, from a person carrying on business at an address in the United Kingdom, and that the wrapper or container had remained unopened ;
- (b) that such particular was shown on or omitted from (as the case may be) the label when the food was purchased by him or shown on or omitted from (as the case may be) a statement furnished to him in respect of that food pursuant to the said Article 3 ; and
- (c) that at the time of the alleged infringement he had no reason to believe that this Order was being infringed :

Provided that a person shall not be entitled to avail himself of the defence provided by this Article unless within fourteen days of the service of the summons he has sent to the prosecutor a copy of the label or statement upon which he intends to rely with a notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it and has also sent a like notice of his intention to that person (Art. 7).

A defendant is also entitled to bring before the court some other person whom he alleges is responsible for the offence (see *ante*, p. 13, for similar provisions of the Act of 1938) (Art. 8).

REGULATIONS AS TO FOOD.

The Minister of Health is empowered by section 8 of the Act of 1938, *infra*, to make regulations as to the importation, preparation, storage, sale, delivery, etc., of food.

Section 8, Food and Drugs Act, 1938.—Power of Minister of Health to make regulations as to the importation, preparation, storage, sale, delivery, etc., of food.

- (1) The Minister of Health (hereafter in this Act referred to as "the Minister") may, subject to the provisions of this section, make regulations (in this Act referred to as "Food Regulations") for all or any of the purposes mentioned in any of the following paragraphs, that is to say :—

- (a) authorising measures to be taken for the prevention of danger to health from the importation, preparation, transport, storage, exposure for sale and delivery of food of various kinds intended for sale or sold for human consumption ;

- (b) requiring wrappers or containers enclosing or containing food of various kinds to be labelled or marked in accordance with the regulations ;
 - (c) prohibiting or restricting the addition of any substance to, and regulating generally the composition of, any food.
- (2) Regulations shall not be made under this section with respect to bread or flour.
- (3) Regulations for any of the purposes mentioned in paragraph (b) or paragraph (c) of subsection (1) of this section may be made with respect to cream, but, save as aforesaid, regulations shall not be made under this section with respect to milk.
- (4) Regulations shall not be made for any of the purposes mentioned in the said paragraph (c) unless they are expressed to be in the opinion of the Minister necessary or expedient for preventing danger to health or loss of nutritional value, or otherwise for protecting purchasers.

As pointed out previously (see *ante*, p. 5), only two sets of regulations have been made by the Minister owing to the war emergency, but the orders and regulations made under the enactments repealed by the Act of 1938 are continued in force by subsection (3) of section 101 of the Act of 1938, *infra*.

Section 101(3), *Food and Drugs Act*, 1938.—*Repeals and construction of references.*

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- (3) In so far as any provision in an order or regulation made under any enactment repealed by this Act could have been made under a corresponding enactment in this Act, or, in the case of a provision in a Milk and Dairies Order, under an enactment in this Act relating to Milk and Dairies Regulations, it shall not be invalidated by this repeal, but shall have effect as if it had been made under that corresponding, or other, enactment in this Act, and may be amended, varied, revoked or enforced accordingly, and any person who is guilty of a contravention of, or non-compliance with, any such provision shall be guilty of an offence under this Act.

The principal Regulations and Orders saved by this provision are as follows :—

- Public Health (Condensed Milk) Regulations, 1923 to 1943(*p*).
- Public Health (Dried Milk) Regulations, 1923 to 1942(*q*).
- Public Health (Meat) Regulations, 1924 and 1935(*r*).
- Public Health (Preservatives, etc., in Food) Regulations, 1925 to 1940(*s*).
- Public Health (Prevention of Tuberculosis) Regulations, 1925(*t*).

(*p*) S.R. and O., 1923, No. 509 ; amended by S.R. and O., 1927, No. 1092 ; and S.R. and O., 1943, No. 896 ; and see *post*, p. 213.

(*q*) S.R. and O., 1923, No. 1323 ; amended by S.R. and O., 1927, No. 1093 ; and S.R. and O., 1943, No. 896 ; and see *post*, p. 218.

(*r*) S.R. and O., 1924, No. 1432 ; amended by S.R. and O., 1935, No. 187 ; and see *post*, p. 238.

(*s*) S.R. and O., 1925, No. 775 ; amended by S.R. and O., 1926, No. 1557 ; S.R. and O., 1927, No. 577 ; and S.R. and O., 1940, No. 633 ; and see *post*, p. 177.

(*t*) S.R. and O., 1925, No. 737 ; and see *post*, p. 407.

Public Health (Imported Milk) Regulations, 1926(*u*).

Milk and Dairies Order, 1926(*v*).

Public Health (Shellfish) Regulations, 1934(*w*).

Milk (Special Designations) Regulations, 1936 to 1946(*x*).

Public Health (Imported Food) Regulations, 1937(*y*).

Section 30 of the Act of 1938 (*post*, p. 223) enables the Minister of Health to make regulations as to the composition of bread and the addition of substances to flour, and section 31 (see *post*, p. 224) prohibits adulterants in bakehouses and mills. The Minister may also make regulations relative to milk and dairies in accordance with the provisions of section 20 of the Act of 1938 (*post*, p. 362). Section 92 of the Act of 1938 (*ante*, p. 4) contains various supplementary provisions relative to Food, Milk and Dairies, and Bread and Flour Regulations.

FOOD STANDARDS.

When the Act of 1938 came into force(*z*) the only food standards in operation were as follows :—

(1) **Milk**—which must not contain less than 3·0 per cent. of milk fat and 8·5 per cent. of solids-not-fat, otherwise it is presumed, until the contrary is proved, to have been adulterated(*a*).

(2) **Skimmed and separated milk**—which must not contain less than 8·7 per cent. of milk solids other than milk fat, otherwise it is presumed, until the contrary is proved, to have been adulterated(*a*).

(3) **Butter**—which must not contain more than 16 per cent. of water(*b*).

(4) **Margarine**—which must not contain more than 16 per cent. of water or more than 10 per cent. of fat derived from milk(*b*) ; there are also detailed provisions regarding labelling of margarine(*c*).

(5) **Milk-blended butter**—which must not contain more than 24 per cent. of water(*b*).

(*u*) S.R. and O., 1926, No. 820 ; and see *post*, p. 341.

(*v*) S.R. and O., 1926, No. 821 ; amended by S.R. and O., 1938, No. 217 ; and Prov. Regs., 1943 ; and see *post*, p. 363.

(*w*) S.R. and O., 1934, No. 1342 ; and see *post*, p. 300.

(*x*) S.R. and O., 1936, No. 356 ; amended by S.R. and O., 1938, No. 218 ; Prov. Regs., 1941 ; S.R. and O., 1942, No. 771 ; and S.R. and O., 1946, No. 10 ; and see *post*, p. 411.

(*y*) S.R. and O., 1937, No. 329, and see *post*, p. 335.

(*z*) 1st October, 1939.

(*a*) Sale of Milk Regulations, 1939 ; S.R. and O., 1939, No. 1417.

(*b*) Sect. 32, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 273 ; and see *post*, p. 199.

(*c*) *Ibid*, sect. 33 ; 31 Halsbury's Statutes 274.

(6) **Condensed milk**—which must comply with the standards laid down by Regulations(*d*).

(7) **Dried milk**—which must comply with the standards laid down by Regulations(*e*).

(8) **Whisky, brandy, rum and gin**—which must not be diluted below 35 degrees under proof(*f*).

(9) **Various foods**—which may not contain preservatives and/or colouring matter otherwise than in accordance with the provisions of the Public Health (Preservatives, etc., in Food) Regulations, 1925 to 1940(*g*) (see *post*, p. 177).

Section 8(1)(c) of the Act of 1938(*h*) enables the Minister of Health to prescribe by regulations the composition of foods, but as previously pointed out (*ante*, p. 159), his functions in this connection have been taken over by the Minister of Food, who is empowered by the Defence (Sale of Food) Regulations, 1943(*i*), to make commodity Orders prescribing standards for foods.

(10) **"Cordials."**—It has been held that the word "cordial," when applied to non-alcoholic beverages, implies that a beverage contains a substantial percentage of sugar(*k*).

The **Food Standards (General Provisions) Order, 1944**(*l*), lays down the general provisions which apply in relation to the standards prescribed by the various Food Standards Orders (see *ante*, p. 145).

Article 1—provides that no person shall sell or offer or expose for sale any description of food for which a standard has been prescribed and is in force and applicable to such a sale, or any food which is so described as to lead an intending purchaser to believe that he is purchasing food of a description for which such a standard is in force, unless the food complies with that standard. Where standards are prescribed they apply only—

- (i) where the food sold is so described as to lead an intending purchaser to believe that he is getting food of a kind for which a standard is prescribed ;
- (ii) where the food is sold in response to a request for food of a kind for which a standard is prescribed.

Article 2—exempts from the provisions of Art. 1, *supra*, any food sold to a Government Department, or food imported into the United Kingdom which is the property of a Government Department.

(*d*) S.R. and O., 1923, No. 509 ; and see *post*, p. 213.

(*e*) S.R. and O., 1923, No. 1323 ; and see *post*, p. 218.

(*f*) Sect. 4, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 255 ; and see *ante*, p. 142.

(*g*) S.R. and O., 1925, No. 775 ; as amended ; and see *post*, p. 177.

(*h*) 31 Halsbury's Statutes 258 ; and see *ante*, p. 159.

(*i*) S.R. and O., 1943, No. 1553.

(*k*) *Sopers of Harrow, Ltd. v. Johnston & Son (London), Ltd. and Henderson & Liddell, Ltd. and Collins Arden Products, Ltd.*, [1944] 2 All E.R. 586, C.A.

(*l*) S.R. and O., 1944, No. 42, as amended by S.R. and O., 1944, No. 654.

Article 3—lays down that in any proceedings in respect of an infringement of the Order, the production of the certificate or copy thereof, of the public analyst or Government Chemist, shall be sufficient evidence of the facts therein stated, unless either party requires the analyst to be called as a witness. If a defendant intends to produce a certificate of a public analyst or the Government Chemist, or to require that person to be called as a witness, he must give to the other party 3 clear days' notice of his intention.

Article 4—enables a person against whom proceedings are brought in respect of an infringement of the Order, to have any other person to whose act or default he alleges that the contravention was due, to be brought before the court, provided he lays information to that effect and gives the prosecution not less than three clear days' notice of his intention. If the original defendant proves that the contravention was due to the other person and that he used all due diligence to secure that the provisions in question were complied with, he must be acquitted of the offence. If the Minister of Food or a food and drugs authority is satisfied that an offence has been committed by some person other than one who could be charged as the original defendant, they may proceed against that other person instead of the original defendant.

Article 5—provides a warranty defence, in similar terms to those contained in section 84 of the Act of 1938(*m*).

The following Food Standards Orders, prescribing standards for the foods in question, have been made by the Minister of Food :—

(1) **Food Standards (Mustard) (No. 2) Order, 1944(*n*)**, prescribes the standard for mustard, including "white mustard flour(*o*)," compound mustard or mustard condiment as follows :—

Mustard, compound mustard or mustard condiment shall be of such composition as to yield not less than 0.35 per cent. of allyl isothiocyanate after maceration with water for two hours at 37° centigrade and shall consist of a blend of brown and white mustard flours with or without amylaceous flours and/or spices; provided that the proportions of amylaceous flours and spices (if any) shall not together exceed 20 per cent. by weight.

The standard does not apply to any article not in powder form, to any article sold under the description "pickling mustard," nor to brown mustard flour(*p*) sold under the description "brown mustard."

Proceedings in respect of an infringement of Article 1 of the Food Standards (General Provisions) Order, 1944 (*ante*,

(*m*) 31 Halsbury's Statutes 306; and see *post*, p. 175.

(*n*) S.R. and O., 1944, No. 275.

(*o*) "White mustard flour" means the product obtained by grinding whole seeds (with or without their husks) of *Sinapis alba* (Linn.)—S.R. and O., 1944, No. 275, Art. 1.

(*p*) "Brown mustard flour" means the product obtained by grinding whole seeds (with or without their husks) of *Brassica nigra* (Linn.), Koch or *Brassica juncea* (Linn.) Czernj. and Cosson or a mixture of such varieties of seeds—*ibid*.

p. 162), in respect of mustard may be instituted by food and drugs authorities *without* the prior consent of the Minister of Food.

(2) **Food Standards (Self-Raising Flour) Order, 1946(q)**, prescribes the standard for self-raising flour as follows:—

1—Self-raising flour shall yield not less than 0·40 per cent. of available carbon dioxide, the available carbon dioxide being determined in the manner specified in paragraph 2 below.

2—The available carbon dioxide shall be determined by ascertaining the difference between the total carbon dioxide and the residual carbon dioxide; and the total carbon dioxide and the residual carbon dioxide shall respectively be determined in the following manner:—

(a) *Total Carbon Dioxide*: Shall be determined by ascertaining the weight thereof evolved when the self-raising flour is treated with excess of dilute sulphuric acid, the evolution being completed either by boiling for five minutes, or by means of reduced pressure.

(b) *Residual Carbon Dioxide*: Shall be determined by taking not less than 5 grammes of the self-raising flour, which shall be mixed to a smooth paste with distilled water, and a further quantity of distilled water amounting in all to not less than twenty times the weight of the flour shall then be incorporated. The liquid shall be heated in a boiling water bath for 30 minutes, being vigorously stirred for the first 5 minutes and thereafter for approximately half a minute at intervals of approximately 5 minutes. The liquid shall forthwith be boiled for 3 minutes, being vigorously stirred during the whole of such period, and then transferred to an apparatus for determining carbon dioxide, through which carbon dioxide-free air shall be passed for not less than 10 minutes. The residual carbon dioxide is the weight thereof evolved when the self-raising flour so treated is further treated with excess of dilute sulphuric acid, the evolution being completed either by boiling for 5 minutes or by means of reduced pressure.

Proceedings in respect of an infringement of Article 1 of the Food Standards (General Provisions) Order, 1944 (*ante*, p. 162), in respect of self-raising flour may be instituted by food and drugs authorities *without* the prior consent of the Minister of Food.

(3) **Food Standards (Shredded Suet) Order, 1944(r)**, provides that shredded suet must contain not less than 83 per cent. by weight of fat. Proceedings in respect of an infringement of Article 1 of the Food Standards (General Provisions) Order, 1944 (*ante*, p. 162), in respect of shredded suet may be instituted by food and drugs authorities *without* the prior consent of the Minister of Food.

(q) S.R. and O., 1946, No. 157.

(r) S.R. and O., 1944, No. 45.

(4) **Food Standards (Baking Powder and Golden Raising Powder) Order, 1944**(s), prescribes the standard for baking powder and golden raising powder, as respects carbon dioxide, as follows :—

- 1—Baking powder shall yield not less than 8 per cent. of available carbon dioxide and not more than 1·5 per cent. of residual carbon dioxide, the available carbon dioxide being determined in the manner described in paragraph 3 below.
- 2—Golden raising powder shall yield not less than 6 per cent. of available carbon dioxide and not more than 1·5 per cent. of residual carbon dioxide, the available carbon dioxide and the residual carbon dioxide being ascertained in the manner specified in paragraph 3 below.
- 3—(1) The residual carbon dioxide shall be determined in the following manner :—

A sample of 2 grammes of baking powder or golden raising powder, as the case may be, shall be treated with 25 millilitres of water and evaporated to dryness on a boiling water bath and subsequently treated with a further 25 millilitres of water and evaporated in like manner. The residual carbon dioxide is the weight thereof evolved when the sample so treated is further treated with excess of dilute sulphuric acid at room temperature, the evolution being completed either by boiling or by means of reduced pressure.

- (2) The available carbon dioxide shall be determined by ascertaining the difference between the total carbon dioxide and the residual carbon dioxide; and the total carbon dioxide shall be determined by ascertaining the weight thereof evolved when the baking powder or golden raising powder, as the case may be, is treated with excess of dilute sulphuric acid at room temperature, the evolution being completed either by boiling for 5 minutes or by means of reduced pressure.

Proceedings in respect of an infringement of Article 1 of the Food Standards (General Provisions) Order, 1944 (*ante*, p. 162), in respect of baking powder and golden raising powder, may be instituted by food and drugs authorities *without* the prior consent of the Minister of Food.

(5) **Food Standards (Preserves) Order, 1944**(t).—This Order prescribes standards for jam, marmalade, fruit curd and mincemeat, as follows :—

PART I.

1. The standards for jam and marmalade shall be as follows :—
 - (i) All jam shall be either fresh fruit standard jam or full fruit standard jam.
 - (ii) All marmalade shall be either fresh fruit standard marmalade, full fruit standard marmalade or special standard marmalade.

(s) S.R. and O., 1944, No. 46.

(t) S.R. and O., 1944, No. 842.

2. The standard for fruit curd (including fruit-flavour curd) and mincemeat shall, as respects soluble solids, be as follows, that is to say :—

The percentage of soluble solids contained therein shall be not less than 65 per cent.

3. " Fresh fruit standard jam " and " fresh fruit standard marmalade " shall be respectively jam and marmalade—
- (i) of which the percentage of soluble solids is not less than $68\frac{1}{2}$ per cent. ;
 - (ii) of which the fruit or vegetable content—
 - (a) is in accordance with the scale set out in Part II of this Schedule ;
 - (b) consists of fresh fruit or vegetables only ; and
 - (iii) which does not contain any added colouring matter or any added preservative other than sugar.
4. " Full fruit standard jam " and " full fruit standard marmalade " shall be respectively jam and marmalade—
- (i) of which the percentage of soluble solids is not less than $68\frac{1}{2}$ per cent. ; and
 - (ii) of which the fruit or vegetable content is in accordance with the scale set out in Part II of this Schedule.
5. " Special standard marmalade " shall be marmalade—
- (i) of which the percentage of soluble solids is not less than $68\frac{1}{2}$ per cent. ;
 - (ii) which is jelly marmalade, or which is coarse-cut marmalade ; and
 - (iii) of which the fruit content is not less than 30 per cent. in the case of coarse-cut marmalade and not less than 20 per cent. in the case of jelly marmalade.
6. (a) " Fruit or vegetable content " means with respect to any jam or marmalade the total quantity of fruit or vegetables of the variety or varieties used in the manufacture of the jam or marmalade, being where such variety or varieties are specified in the description thereof in the first column of Part II of this Schedule the total quantity of fruit or vegetables so specified. The said quantity is the total quantity of fresh fruit or vegetables used in the manufacture of the jam or marmalade or in the case where fruit or vegetable pulp is used the quantity of fruit or vegetables used in the manufacture of the pulp (no account being taken of fruit juice or fruit or vegetable pectin), expressed as a percentage based on the number of pounds of fresh fruit or vegetables required to be used in making 100 lb. of finished jam or marmalade ; and the expression " fruit content " shall be construed accordingly ;
- (b) " Percentage of soluble solids " means with respect to any product the percentage by weight of soluble solids ascertained by means of a refractometer when the product is cold, no correction being made for insoluble solids.

PART II.

MINIMUM FRUIT CONTENT.

First Column.	Second Column.
Description of Jam or Marmalade. (Fresh Fruit Standard or Full Fruit Standard.)	Percentage of Fruit or Vegetables.
A.—JAM.	
Apple and Blackberry	40 (30/10)
Apple and Blackcurrant	
Apple and Damson	
Apple and Plum	
Apple and Raspberry and/or Loganberry	
Apple and Strawberry	40
Apple Jelly	40
Apricot	40 (20/20)
Apricot and Peach	40
Bilberry	40
Blackberry (or Bramble) and Blackberry (or Bramble) Seedless or Jelly ..	38
Blackcurrant and Blackcurrant Jelly ..	20
Cherry	40
Damson and Damson Jelly	38
Elderberry Jelly and Elderberry Seedless	40
Gooseberry	30
Greengage	38
Loganberry	20
Peach and Mixtures of Peach with Citrus Fruit	40
Pineapple	40
Plum and Plum Jelly	40
Plum and Blackcurrant	40 (30/10)
Plum and Raspberry	40 (30/10)
Plum and Strawberry	40 (30/10)
Quince Jelly	40
Raspberry and Raspberry Seedless or Jelly	20
Raspberry and Gooseberry	25 (10/15)
Raspberry and Redcurrant	20 (10/10)
Redcurrant Jelly	20
Rhubarb	40
Rhubarb and Blackberry	40 (30/10)
Rhubarb and Raspberry	40 (30/10)
Strawberry	30
Strawberry and Gooseberry	30 (15/15)
All other jams	40
B. MARMALADE*	20

Note.—Where figures in brackets are specified in the second column above in respect of a description of jam containing more than one variety of fruit or vegetables the first figure denotes the content of the variety of fruit or vegetables first mentioned in such description, and the second figure denotes the total content of the other varieties of fruit or vegetables mentioned in such description.

* For special standard marmalade, see paragraph 5 of Part I of this Schedule.

Proceedings for an infringement of Article 1 of the Food Standards (General Provisions) Order, 1944 (*ante*, p. 162), in respect of any article for which a standard is prescribed by the Food Standards (Preserves) Order, 1944, *supra*, may be brought by a food and drugs authority *without* the prior consent of the Minister of Food.

The Ministry of Food have issued licences for the manufacture of the following products, which are described as jam or marmalade and sold for special dietetic purposes but do not comply with the prescribed standard. The desirability of specifically exempting these products from the provisions of the Order of 1944, *supra*, is under consideration, but meanwhile the Ministry have suggested that proceedings should not be instituted under the Defence (Sale of Food) Regulations (*ante*, p. 144), in respect of such products—

Callard, Stewart & Watt, Ltd.		Casoid Jams and Marmalade.
		Ponos Jams and Marmalade.
		Saccharin Jams and Marmalade.
Crosse & Blackwell, Ltd.	..	Diabetic Jam and Marmalade.
Energen Foods Co., Ltd.	..	Energen Jams.
Scottish Co-operative Wholesale Society	.. .. .	Diabetic Jam(u).

(6) Food Standards (Liquid Coffee Essences) Order, 1945(v), prescribes the standard for liquid coffee essence or extract and of liquid coffee and chicory essence or extract as follows :—

1. The standard for liquid coffee essence or extract shall be as follows :—

(a) The product shall contain not less than 0.5 per cent. weight in volume of caffeine derived from coffee :

Provided that in any proceedings a product shall be deemed to comply with the requirements of the foregoing subparagraph if the defendant proves that not less than 4 lb. of roasted coffee was used in the preparation of each gallon of the product.

(b) The product shall not contain extractives from any roasted vegetable matter other than coffee.

2. The standard for liquid coffee and chicory essence or extract shall be as follows :—

(a) The product shall contain not less than 0.25 per cent. weight in volume of caffeine derived from coffee :

Provided that in any proceedings a product shall be deemed to comply with the requirements of the foregoing subparagraph if the defendant proves that not less than 2 lb. of roasted coffee was used in the preparation of each gallon of the product.

(b) The product shall not contain extractives from any roasted vegetable matter other than coffee or chicory.

(u) Circular FSL/10/45, Ministry of Food, 22nd February, 1945.

(v) S.R. and O., 1945, No. 389, fully operative on 1st December, 1945.

Proceedings in respect of an infringement of Article 1 of the Food Standards (General Provisions) Order, 1944 (*ante*, p. 162), in respect of liquid coffee essences may be instituted by a food and drugs authority *without* the prior consent of the Minister of Food.

(7) **Food Standards (Salad Cream and Mayonnaise) Order, 1945**(*w*), prescribes the standard for salad cream, mayonnaise and any other salad dressing, as follows:—

The product shall contain not less than 25 per cent. by weight of edible vegetable oil and not less than 1·35 per cent. by weight of egg-yolk solids.

The standard does not apply to any product sold under a description other than salad cream or mayonnaise in the following cases:—

- (i) Where the product is sold by a caterer as part of a meal served in the course of his catering business ; or
- (ii) Where the product is sold with a label attached to or marked on the wrapper or container, bearing a statement " This product is not a salad cream or mayonnaise and does not comply with the statutory standard prescribed for those products," such statement to be clearly legible, to appear conspicuously and in a prominent position on the label, and in the event of the food being sold with more than one label describing the food, to be repeated on each such label.

Proceedings in respect of an infringement of Article 1 of the Food Standards (General Provisions) Order, 1944 (*ante*, p. 162), in respect of salad cream or mayonnaise, may be instituted by a food and drugs authority *without* the prior consent of the Minister of Food.

Chocolate flavoured flour mixtures.—The Ministry of Food have intimated(*x*) that it has been decided only to licence under the Manufactured and Pre-packed Foods (Control) Order, 1942(*y*), the manufacture of chocolate sponge mixtures, chocolate cake mixtures and chocolate pudding mixtures and variations thereof which contain a minimum of 10 per cent. of cocoa. This step is designed to secure that the finished product (*i.e.* after preparation by recipe) shall contain approximately 4 per cent. of fat-free cocoa.

Dried Egg (Control of Use) Order, 1945(*z*), prohibits, except under licence from the Minister of Food, the use of dried egg by way of trade or business in the manufacture (i) of ice-cream, synthetic cream and baker's cream filling, and (ii) of products sold in a wet state for use in the manufacture

(*w*) S.R. and O., 1945, No. 1177, fully operative on 1st May, 1946.

(*x*) Circular FSL/18/45, Ministry of Food, 27th November, 1945

(*y*) S.R. and O., 1942, No. 1863.

(*z*) S.R. and O., 1945, No. 627.

of those foods. The Order also requires manufacturers who include dried egg in a dry mixture intended for the manufacture of any specified food to declare the fact in a prescribed form on the container. The Order is designed to prevent the growth of bacteria, and accordingly licences issued under it will prescribe the methods of processing to be adopted for this purpose. The Order is dealt with in detail in Chapter 7, *post*, p. 212.

LEGAL PROCEEDINGS.

Prosecutions.—Section 80 of the Act of 1938 (*ante*, p. 9), provides that all offences in respect of adulterated food and drugs may be prosecuted under the Summary Jurisdiction Acts, provided that where a sample has been procured in accordance with the provision of the Act (see Chapter 4, *ante*, p. 51), a prosecution may not be commenced after the expiration of 28 days from the time when the sample was procured, unless the justice before whom the information is laid, on being satisfied on oath that having regard to the circumstances of the particular case, it was not practicable to lay the information at an earlier date, gives a certificate to that effect, but in no case may the prosecution be commenced after the expiration of 42 days from the time the sample was obtained. Where, however, proceedings are taken in respect of a false warranty(*a*), the time within which proceedings may be commenced is 12 months and not 6 months, the usual period under the Summary Jurisdiction Acts.

Normally, legal proceedings in respect of a sample of food must be taken before a court having jurisdiction in the place where the sample was obtained. Where, however, a sample procured within one area is for the purposes of the Act of 1938 deemed(*b*) to have been procured within another area, proceedings may be taken either before a court having jurisdiction within the area where the sample was actually obtained, or within the area in which it was deemed to have been procured, at the option of the prosecutor. In a case where the article sampled is sold and actually delivered to the purchaser, proceedings may, if the prosecutor so desires, be taken before a court having jurisdiction at the place of delivery(*c*).

It has been held that the prosecution commences on the day the information is laid and not the day when the summons is served(*d*). It should be noted that the limit of 28 days applies to proceedings against persons charged with aiding and

(*a*) Sect. 85, Food and Drugs Act, 1938; 31 Halsbury's Statutes 307; and see *post*, p. 176.

(*b*) *Ibid*, sect. 68(5)(6); 31 Halsbury's Statutes 295; and see *ante*, p. 52.

(*c*) *Ibid*, sect. 85(2); 31 Halsbury's Statutes 307.

(*d*) *Beardsley v. Giddings*, 1904 1 K.B. 847; 25 Digest 102, 248.

abetting as well as to those charged as principals(e). A prosecution in respect of the giving of a false warranty is subject to the time limit of 12 months laid down in section 80(1) of the Act of 1938 (*ante*, p. 9), notwithstanding that a sample was taken at a date subsequent to the giving of the warranty from the original goods sold in bulk(f). In other words, if proceedings are taken under section 85 of the Act of 1938 (*post*, p. 176) in respect of a false warranty on information obtained as a result of an analysis carried out on a sample obtained in the normal way, the time limit for the institution of legal proceedings is 12 months and not 28 days. It is by no means clear whether, in calculating the period of 28 days, the day on which the sample was procured should be counted or not, although there are some cases which suggest it may be excluded(g). It is wise, however, on all occasions to lay the information as quickly as possible so as to avoid any risk of being outdated. It should be noted that the summons may not be made returnable less than 14 days(h) from the day on which it is served and a copy of the analyst's certificate must be served with the summons(i). The service of notices under the Act of 1938 must be in accordance with the provisions of section 285, Public Health Act, 1936(k), and it has been held that such provisions apply to a summons(l).

Where proceedings are taken in respect of a sample which has been divided into parts as required by the Act of 1938 (*ante*, p. 60) the part of the sample retained by the person procuring the sample must be produced in court at the hearing(m). The court is entitled, if it thinks fit, and must upon the request of either party, to cause the portion of the sample produced in court to be sent to the Government Chemist for analysis. If, in a case where an appeal is brought (see *ante*, p. 14), the portion of the sample produced in court was not sent to the Government Chemist, the appeal court may do so(n). It is absolutely essential that the third portion of the sample should be available for production in court when proceedings are taken, and failure to do so would be fatal to a

(e) *Gould & Co. v. Houghton*, [1921] 1 K.B. 509; 25 Digest 104, 282.

(f) *Herman Jennings & Co., Ltd. v. Slatcher*, [1942] 2 K.B. 115; [1942] 2 All E.R. 1.

(g) See *Frew v. Morris* (1897), 24 R. (Ct. of Sess.) 50; 25 Digest 106, 291, ii; and

Horan v. Power (1916), 50 I.L.T. 64; 25 Digest 105, 291, i.

(h) Which must be clear days, see *McQueen v. Jackson*, [1903] 2 K.B. 163; 25 Digest 106, 296.

(i) Sect. 80(3), Food and Drugs Act, 1938; 31 Halsbury's Statutes 304; and see *ante*, p. 9.

(k) 29 Halsbury's Statutes 506; and see *ante*, p. 7.

(l) *R. v. Hastings, J. J.*, *Ex parte Mitchell* (1925), 89 J.P.Jo. 86.

(m) Sect. 80(4), Food and Drugs Act, 1938; 31 Halsbury's Statutes 304; and see *ante*, p. 9.

(n) *Ibid*, sect. 82; 31 Halsbury's Statutes 305

conviction. In the case of perishable foods, therefore, such as milk, it is of the utmost importance that sampling officers should be provided with adequate and suitable accommodation for the portions of samples retained for production in court if necessary. A refrigerator is really essential for this purpose (see *ante*, p. 63).

Section 81 of the Act of 1938, *infra*, details the rules with respect to the submission of analysts' certificates.

Section 81, Food and Drugs Act, 1938.—Evidence of certificates of analysis, and presumptions.

- (1) In any proceedings under this Act, the production by one of the parties of a document purporting to be a certificate of a public analyst in the prescribed form, or of a document supplied to him by the other party as being a copy of such a certificate, shall be sufficient evidence of the facts stated therein, unless, in the first-mentioned case, the other party requires that the analyst shall be called as a witness.
- (2) In any such proceedings, if a sample of milk has been taken by an officer of one authority at the request of an officer of another authority, a document purporting to be a certificate signed by the officer who took the sample and stating that the provisions of this Act with respect to the manner in which samples are to be dealt with were complied with shall, if a copy thereof has been served on the defendant with the summons, be sufficient evidence of compliance with those provisions, unless the defendant requires that the officer shall be called as a witness.
- (3) In any such proceedings, if a defendant intends to produce a certificate of a public analyst, or under subsection (1) of this section, to require that the public analyst shall be called as a witness, or under the last preceding subsection to require that a sampling officer shall be called as a witness, notice of his intention together, in the first-mentioned case, with a copy of the certificate shall be given to the other party at least three clear days before the day on which the summons is returnable, and, if this requirement is not complied with, the court may, if it thinks fit, adjourn the hearing on such terms as it deems proper.
- (4) For the purposes of this Act and of any regulations made thereunder—
 - (a) articles commonly used for human consumption shall, if sold or offered, exposed or kept for sale, be presumed, until the contrary is proved, to have been sold, or, as the case may be, to have been or to be intended for sale, for human consumption;
 - (b) any article commonly used for human consumption which is found on premises used for the preparation, storage, or sale of that article and any article commonly used in the manufacture of products for human consumption which is found on premises used for the preparation, storage or sale of those products, shall be presumed, until the contrary is proved, to be intended for sale, or for manufacturing products for sale, for human consumption;

- (c) any substance capable of being used in the composition or preparation of any article commonly used for human consumption which is found on premises on which that article is prepared, shall, until the contrary is proved, be presumed to be intended for such use.

It is important to notice that the analyst's certificate must be accepted and cannot be questioned without the appearance of the analyst as a witness, which the other party is entitled to demand if they so desire. It sometimes happens, however, that a sampling officer is subjected to cross-examination on the contents of an analyst's certificate. This is quite improper, and the sampling officer is not entitled to express an opinion on the report of the public analyst, who alone can be questioned as to its contents. The sampling officer is simply required to prove that the certificate handed in as evidence is in fact the certificate received by him from the public analyst and relates to the sample in respect of which the proceedings are taken. As to public analysts and certificates of analysis, see Chapter 3, *ante*, p. 38.

It has been held that if the analyst's certificate is the only evidence before the court it should be treated as conclusive(o), but it is not conclusive if there is evidence to rebut the statements contained in it(p).

Proceedings against actual offender.—Section 83 of the Act of 1938 (see *ante*, p. 13) enables a food and drugs authority to institute proceedings against the actual offender, notwithstanding that the food or drug in question has passed through a number of hands prior to its being sampled and found to contravene the provisions of the Act. This procedure enables an honest retailer to avoid being convicted in respect of an offence committed by the manufacturer or wholesaler. Not only does this section authorise the authority to proceed directly against the actual offender but if they proceed against the retailer, he is able to bring before the court any other person—such as the wholesaler or manufacturer—who he alleges is actually responsible for the offence. If the court is satisfied that the retailer is not guilty of the offence, he is entitled to be discharged and the other person brought by him before the court convicted of the offence. This is a very important provision. There is a tendency on the part of some authorities to bring before the court, as a matter of routine, the person from whom the sample was actually procured, without considering whether or not he is really guilty of the offence, leaving it to him to take any necessary steps he may think fit, as

(o) *Harrison v. Richards* (1881), 45 J.P. 552; 25 Digest 78, 76.

(p) *Hewitt v. Taylor*, [1896] 1 Q.B. 287; 25 Digest 78, 75; and *Collins Arden Products, Ltd. v. Barking Corp'n.* [1943] K.B. 419; [1943] 2 All E.R. 249.

provided by section 83, *supra*, to bring the actual offender before the court. This is not a desirable procedure. Not only does it tend to prolong the proceedings and increase costs, but it is unwise to charge a person with an offence which it is known, with reasonable certainty, he has not committed. There are, however, one or two practical difficulties in the matter which must be given careful consideration. In the first place, the detailed enquiries necessary before the actual offender can be discovered may take so much time that the prosecution would be outdated (see *ante*, p. 11). If there is any risk of this happening, proceedings should be taken against the retailer, leaving it to him to summons any other person he may allege to be responsible for the offence. There does not appear to be any necessity for such latter proceedings to be commenced within 28 days from the date when the sample was procured. It is sufficient that the original proceedings are started within that period. Secondly, even after the most careful enquiries, the authority may be in some doubt as to the actual offender, particularly when the commodity concerned has passed through many channels. In such cases it is obviously only right that the court should hear the evidence of all parties and decide which of them is guilty of the offence. It is quite clear that section 83, *supra*, enables a whole chain of distributors and vendors, as well as the original manufacturer of an article of food to be brought before the court at one and the same time(*q*).

The limit of time for the institution of proceedings imposed by section 80 of the Act of 1938 (see *ante*, p. 9) does not apply in cases taken under section 83, *supra*, the date of an offence being the date of the resale by the retailer and not the date on which the wholesalers or manufacturers sold to the retailer(*r*).

Warranty defence.—In their Third Report(s), the Local Government and Public Health Consolidation Committee—which drafted the Act of 1938—said that the “*warranty defence*” is, in effect, a device for enabling a defendant who is not the actual manufacturer or producer of the article in question to secure acquittal by proving an absence of “*intent*.” In this respect it is closely akin to the provisions of section 83 (see *ante*, p. 13) which are designed to exempt from conviction a defendant whose offence is technical only and to secure the conviction of the real culprit.

(*q*) See *British Fermentation Products, Ltd. v. British Italian Trading Co., Ltd.*, [1942] 2 K.B. 145; [1942] 2 All E.R. 256.

(*r*) *Concentrated Foods, Ltd. v. Champ*, [1944] K.B. 342; [1944] 1 All E.R. 272; *British Doughnut Co., Ltd. v. Dale*, [1944] K.B. 228.

(*s*) Cmd. 5628; December, 1937; H.M.S.O.

Section 84 of the Act of 1938, *infra*, contains the conditions under which a warranty may be pleaded as a defence.

Section 84, Food and Drugs Act, 1938.—Conditions under which a warranty may be pleaded as defence.

- (1) Subject to the provisions of this section, in the case of any prosecution under Part I, Part II or Part III of this Act in respect of selling, exposing or offering for sale, or having in possession for sale, an article which was not of a nature, substance or quality entitling a person to sell or otherwise deal with it under the description or in the manner under, or in, which the defendant dealt with it, it shall be a defence for the defendant to prove—
 - (a) that he purchased it as being an article of such a nature, substance and quality as would have so entitled him and with a written warranty to that effect ; and
 - (b) that he had no reason to believe at the time of the commission of the alleged offence that it was otherwise ; and
 - (c) that it was then in the same state as when he purchased it.
- (2) A warranty shall only be a defence to proceedings under this Act if—
 - (a) the defendant has within seven days of the service of the summons sent to the prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to that person ; and
 - (b) in the case of a warranty given by a person resident outside the United Kingdom, the defendant proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained therein ; and
 - (c) in the case of a prosecution in respect of a sample of milk, the defendant has within sixty hours after the sample was procured served such a notice as is mentioned in paragraph (2) of the Third Schedule to this Act.
- (3) Where the defendant is a servant of the person who purchased the article under a warranty, he shall be entitled to rely on the provisions of this section in the same way as his employer would have been entitled to do if he had been the defendant.
- (4) The person by whom the warranty is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.
- (5) For the purposes of this and the next succeeding section, a name or description entered in an invoice shall be deemed to be a written warranty that the food or drug to which the entry refers is of such a nature, substance and quality that a person can sell, or otherwise deal with it, under that name or description without contravening any of the provisions of this Act or of regulations made thereunder.

It should be emphasised that an invoice is equally a warranty, as is a document expressly designed as such. Prior to the Act of 1938 there were many cases in the courts as to

what was meant by a "warranty," but the provisions of subsection (5) of section 85, *supra*, make the position clearer, and it would seem that there should be much less difficulty in dealing with this point than was the case prior to the operation of the Act of 1938(*t*).

It has been held in a number of cases(*u*) that even if the warranty is in limited terms, it is nevertheless a valid warranty and affords a defence to the person relying upon it. It has also been held(*v*) that a warranty must be given by the vendor and not gratuitously by a third party.

The offences in relation to warranties are prescribed in section 85 of the Act of 1938, *infra*.

Section 85, Food and Drugs Act, 1938.—Offences in relation to warranties, and certificates of analysis.

- (1) A defendant who in any proceedings under this Act wilfully applies to any food or drug a warranty or certificate of analysis given in relation to any other food or drug shall be guilty of an offence.
- (2) A person who, in respect of any food or drug sold by him, gives to the purchaser a false warranty in writing, shall be guilty of an offence, unless he proves that when he gave the warranty he had reason to believe that the statements or description contained therein were accurate.
- (3) Where the defendant in a prosecution under this Act relies successfully on a warranty given to him or to his employer, any proceedings under the last preceding subsection in respect of the warranty may, at the option of the prosecutor, be taken either before a court having jurisdiction in the place where a sample of the food or drug to which the warranty relates was procured, or before a court having jurisdiction in the place where the warranty was given.

PENALTIES.

A person who is found guilty of an offence with respect to the adulteration of food or drugs is liable to a fine not exceeding £20 for a first offence, and, in the case of a subsequent offence, to a fine not exceeding £100 or to imprisonment for a term not exceeding 3 months, or to both such fine and imprisonment(*w*).

(*t*) As to the earlier decisions on this point, see *Bell's Sale of Food and Drugs*, Eleventh Edition, 1943, London, Butterworth & Co., Ltd., pp. 201 *et seq.*

(*u*) See *Wilson v. Playle* (1903), 67 J.P. 263; 25 Digest 97, 214.

Evans v. Weatheritt, [1907] 2 K.B. 80; 25 Digest 96, 209.

Plowright v. Burrell, [1913] 2 K.B. 362; 25 Digest 97, 215; and

Jackling v. Carter (1912), 76 J.P. 292; 25 Digest 97, 216.

(*v*) *Hargreaves v. Spackman* (1907), 72 J.P. 52; 25 Digest 94, 192.

(*w*) Sect. 79, Food and Drugs Act, 1938; 31 Halsbury's Statutes 303; and see *ante*, p. 12.

CHAPTER 6.

PRESERVATIVES IN FOOD.

INTRODUCTION.

The legal provisions relating to chemical preservatives in food are contained in the Public Health (Preservatives, etc., in Food) Regulations, 1925(*a*), which were amended in 1926(*b*), 1927(*c*) and 1940(*d*). Prior to 1925 many substances were used in food as preservatives, as was shown in the report of the Departmental Committee on the use of Preservatives and Colouring Matters in Food(*e*), which listed the common preservatives as follows :—

Boric or boracic acid and borates ;
Sulphurous acid and sulphites ;
Fluorides (to a very limited extent) ;
Benzoic acid and benzoates (to a very limited extent) ;
Salicylic acid ; and
Formalin and formaldehyde.

The Committee found it generally accepted—

- (1) That it is undesirable to add to articles of food any material not of the nature, substance and quality of food ;
- (2) That if for commercial or other reasons the addition is necessary, it should be limited to the minimum required to effect its purpose ;
- (3) That if it can be shown that some of these materials are less undesirable than others, preference should be given to the employment of the less undesirable materials(*f*).

Although a large number of manufacturers and traders who urged the use of preservatives in food stated that they had never received complaints of injury from persons consuming articles of food which contained preservatives, the Committee considered this evidence of little value, "*since it is most unlikely that any symptoms of acute poisoning or of acute injury would accrue from the small amounts of chemical preservatives found in food*"(*g*). The symptoms most likely to be expected are "*flatulence, dyspepsia, slight colic, slight diarrhœa, wasting, or general impairment of health*"(*h*).

Apart from possible danger to human health from the presence of the preservative itself, the Committee found that

(*a*) S.R. and O., 1925, No. 775.

(*b*) S.R. and O., 1926, No. 1557.

(*c*) S.R. and O., 1927, No. 577.

(*d*) S.R. and O., 1940, No. 633.

(*e*) Final Report of the Departmental Committee on the use of Preservatives and Colouring Matter in Food, Ministry of Health, 1924.

(*f*) *Ibid*, paragraph 25.

(*g*) *Ibid*, paragraph 34.

(*h*) *Ibid*.

the preservative may mask incipient putrefactive condition in the food and thus not only favour careless and improper methods of food production and handling, but it may also lead to the eating of food which was definitely unfit for human consumption(*i*).

The Departmental Committee summarised their conclusions and recommendations as follows(*k*) :—

Ministry of Health—Final Report of the Departmental Committee on the use of Preservatives and Colouring Matters in Food, 1924.

Summary of Conclusions and Recommendations—

- 1—Preservatives(*l*) should be prohibited in all articles of food and drink offered or exposed for sale whether manufactured in this country or imported, except that

(A) *Sulphur dioxide* only should be permitted—

- (i) in *sausages* in amounts not exceeding 3 grains per pound ;
- (ii) in *jam*, in amounts not exceeding 0.3 grains per pound ;
- (iii) in *dried fruit* in amounts not exceeding 7 grains per pound ;
- (iv) in *preserved (but not dried) whole fruit or fruit pulp* in amounts not exceeding 5 grains per pound ;
- (v) in *beer and cider* whether in bottles or in cask in amounts not exceeding 5 grains per gallon ;
- (vi) in *alcoholic wines, non-alcoholic wines and cordials, and fruit juices*, sweetened and unsweetened, in amounts not exceeding 3 grains per pint ;

(B) *Benzoic acid* only should be permitted—

- (i) in *coffee extract* in amounts not exceeding 3 grains per pound ;
- (ii) in *non-alcoholic wines and cordials, and sweetened and unsweetened fruit juices* (as an alternative to sulphur dioxide) in amounts not exceeding 5 grains per pound ;
- (iii) in *sweetened mineral waters and in brewed ginger beer* in amounts not exceeding 1 grain per pint.

The method of estimating the foregoing preservatives should be prescribed by the Minister of Health.

(i) *Ibid*, paragraph 38.

(l) The term "preservative" does not include salt, saltpetre, sugar, vinegar, acetic acid, alcohol and spices or the minute quantities of preservative agents introduced by the process of curing known as "smoking," nor does it include substances which, though they may have some preservative properties, are added to food for other than preservative purposes, and in the amounts in which they may be used in food possess preservative properties in so slight a degree that they cannot be regarded as commercially practicable preservatives. The term "preservative" is, however, to be interpreted in the Report as including every other substance which, when added to food, has the property of preventing, arresting, delaying or masking fermentation or putrefaction in food—*ibid*, paragraph 27.

(k) *Ibid*, paragraph 58.

- 2—The sale of any preparation as a food preservative or for use in such circumstances that it may be introduced into food should be declared illegal unless such preparation—
 - (a) bears a description clearly indicating its composition and strength ;
 - (b) is free from impurities and in particular contains not more than 1/100th part of 1 grain of arsenic per pound or more than 1/7th part of 1 grain of lead per pound.
- 3—The use of preservatives so far as they are permitted should be upon the condition that the nature and quantity of the preservative present in the article of food should be declared in a manner prescribed by the Minister of Health. In cases in which the declaration of the preservative might be difficult to enforce or might result in undue harm to the industry without compensating advantage to the consumer, exception to this requirement might be made, but the exception should in no circumstances apply to sausages.
- 4—The employment of a copper salt to colour or preserve the colour of peas and other vegetables should be prohibited.
- 5—A schedule should be issued by the Minister of Health after such inquiry as is necessary of colouring matters the use of which may be considered non-injurious to health, such schedule to be subject to amendment or extension from time to time as occasion may require. Within a suitable period after the publication of this list the use of any other colouring matter should be prohibited unless and until it shall have been approved by the Minister.
- 6—Before the prohibition of preservatives or of colouring matters in food (including the use of copper salts for the so-called greening of vegetables) is enforced, a period of grace should be allowed sufficient to enable manufacturers and importers to adjust their methods and processes and to allow stocks to be cleared.
- 7—Improved methods in the storage and transport of food by rail, road and water, especially as regards the use of refrigeration and cool-air storage, are urgently required.
- 8—It should be provided by law that any Regulations or Statute prohibiting or limiting the use of preservatives and colouring matters should bind the courts in proceedings taken under the Sale of Food and Drugs Acts in respect of their use.
- 9—An amendment of the law is required to render more expeditious the prosecution of a person actually responsible for offences under these Acts, where a warranty defence is pleaded.
- 10—Further powers of control by registration, licensing or inspection should be given to local authorities in relation to all places concerned in the production, sale, storage and distribution of food.

The Regulations of 1925 to 1940, *supra*, prohibit the use of any preservatives except *sulphur dioxide* and *benzoic acid*, and these substances may only be used in certain specified foods and in prescribed quantities. As a result of the prohibition of the use of many substances formerly used as preservatives, a considerable change has occurred in the handling of many kinds of food. Much greater care and attention has

to be devoted to the production, handling, distribution and storage of food in order to prevent decomposition or deterioration taking place before such food reaches the consumer. Notwithstanding many statements to the contrary, made at the time the Regulations first appeared in 1925, it is possible for perishable foods to reach the consumer in a perfectly fresh and wholesome condition without the use of chemical preservatives, *provided* proper care is taken in handling the foods at all stages. This is largely a matter concerning food traders, who are now generally fully alive to the importance of the problem. In this connection the provisions of section 13 of the Act of 1938 (see *post*, p. 313) should be borne in mind.

The Regulations of 1925 to 1940 were made by the Minister of Health under Acts which were repealed by the Act of 1938, but are continued in force by virtue of section 101(3) of that Act(*m*). In future Regulations relating to preservatives, colouring matter and thickening substances will be made in accordance with the powers contained in section 8 of the Act of 1938 (see *ante*, p. 159).

LOCAL AUTHORITIES FOR THE ENFORCEMENT OF THE PROVISIONS RELATING TO PRESERVATIVES.

The Regulations of 1925 to 1940 are administered by food and drugs authorities (see *ante*, p. 19), and it is the duty of every officer authorised in writing by that authority to enforce and execute the Regulations, and for that purpose to make such enquiries and take such other steps as may seem necessary for securing the due observance of the provisions of the Regulations(*n*).

Any officer authorised by the Minister of Health and any authorised officer of the local authority (see *ante*, p. 33) has power of entry at all reasonable times on premises where articles to which the Regulations apply are prepared, packed, labelled or stored. Such officer may take samples of any such article or of any substance used or capable of being used in the preparation of any such article and of any labels designed to be affixed to any such article or to any package or other receptacle containing such article, but he must make reasonable payment for any samples taken if required to do so. Where a sample is taken for the purposes of the Regulations, the provisions of the Act of 1938 relating to sampling (see *ante*, p. 50) apply as if the officer were a sampling officer under that Act. In cases where an analysis is required the provisions

(*m*) 31 Halsbury's Statutes 317; and see *ante*, p. 160.

(*n*) Article 3, Public Health (Preservatives, etc., in Food) Regulations, 1925; S.R. and O., 1925, No. 775.

of section 70 of the Act of 1938(*o*) apply(*p*). As to the powers of sampling officers and of sampling generally, see *ante*, p. 50. It is the general rule for most, if not all, samples of food likely to contain preservatives to be examined for their presence by the public analyst as a matter of routine. As pointed out later (see *post*, p. 192), an offence may be committed against the provisions of the Act of 1938 relating to the adulteration of food, in addition to an offence against the Preservatives Regulations in respect of preservatives, colouring matter or thickening substances.

Every person must, if required, give all reasonable assistance in his power to an officer of Customs and Excise or of any local authority, and he must, in relation to anything within his knowledge, furnish any such officer with all information which he may reasonably require for the purposes of the Regulations, including information as to the persons from whom or places from which any article to which the Regulations apply has been obtained, and to whom and to which it has been consigned or otherwise disposed of(*q*).

DEFINITION OF PRESERVATIVE.

The expression " preservative " means—

✓ Any substance which is capable of inhibiting, retarding or arresting the process of fermentation, acidification or other decomposition of food or of masking any of the evidences of putrefaction ; but it does not include common salt (sodium chloride), saltpetre (sodium or potassium nitrate), sugars, lactic acid, acetic acid or vinegar, glycerine, alcohol or potable spirits, herbs, hop extract, spices and essential oils used for flavouring purposes or any substance added to food by the process of curing known as smoking.

" Sulphur dioxide " includes sulphites, and " benzoic acid " includes benzoates. Sulphites must be calculated as sulphur dioxide (SO_2) and benzoates as benzoic acid ($\text{C}_6\text{H}_5\text{COOH}$)(*r*).

FOODS TO WHICH PRESERVATIVES MAY BE ADDED.

The following articles of food, specified in Part 1 of the First Schedule to the Regulations, may contain the specified preservatives(*s*), subject to the conditions laid down in Article 4(2) (see *post*, p. 183).

(*o*) 31 Halsbury's Statutes 296 ; and see *ante*, p. 55.

(*p*) Article 6, Public Health (Preservatives, etc., in Food) Regulations, 1925 ; S.R. and O., 1925, No. 775.

(*q*) *Ibid*, Article 14.

(*r*) *Ibid*, Article 2.

(*s*) *Ibid*, Article 4(1).

**Public Health (Preservatives, etc., in Food) Regulations,
1925 to 1940.**

First Schedule.

Part I—Articles of food which may contain preservative, and nature and proportion of preservative in each case.

The articles of food specified in the first column of the following table may contain the preservative specified in the second column in proportions not exceeding the number of parts (estimated by weight) per million specified in the third column :—

Food.	Preservative.	Parts per million.
1—Sausages and sausage meat containing raw meat, cereals and condiments	Sulphur dioxide	450
2—Fruit and fruit pulp (not dried) for conversion into jam or crystallised glacé or cured fruit as defined in items 6 and 7 :		
(a) Cherries	do.	3,000
(b) Strawberries and raspberries	do.	2,000
(c) Other fruit	do.	1,500
3—Dried fruit :		
(a) Apricots, peaches, nectarines, apples and pears	do.	2,000
(b) Raisins and sultanas ..	do.	750
4—Unfermented grape juice and non-alcoholic wine made from such grape juice if labelled in accordance with the rules contained in the Second Schedule to these Regulations	Benzoic acid	2,000
5—Other non-alcoholic wines, cordials and fruit juices, sweetened or unsweetened.	Either sulphur dioxide or benzoic acid	350 600
6—Jam (including marmalade and fruit jelly prepared in the way in which jam is prepared)	Sulphur dioxide	40
7—Crystallised glacé or cured fruit (including candied peel)	do.	100
7a—Fruit and fruit pulp not otherwise specified in this Schedule	do.	350
8—Sugar (including solid glucose) and cane syrups	do	70
8a—Cornflour (maize starch) and other prepared starches ..	do	100
9—Corn syrup (liquid glucose) ..	do.	450

Food.	Preservative.	Parts per million.
10—Gelatine	do.	1,000
11—Beer	do.	70
12—Cider	do.	200
13—Alcoholic wines	do.	450
14—Sweetened mineral waters	Either sulphur dioxide or benzoic acid	70 120
15—Brewed ginger beer	Benzoic acid	120
16—Coffee extract	do.	450
17—Pickles and sauces made from fruit or vegetables	do.	250

It is of interest to note that in Scotland *minced butcher's meat* may contain 450 parts per million of sulphur dioxide during the months of June, July, August and September^(t).

The special provisions relating to the use of sulphur dioxide and benzoic acid as preservatives in the above foods are as follows :—

Public Health (Preservatives, etc., in Food) Regulations, 1925 to 1940—Article 4(2).

(2) The following provisions shall have effect with respect to any of the articles of food mentioned in paragraph 1 of the Second Schedule to these Regulations which contains any preservative specified in Part I of the First Schedule as permissible in the case of such article, that is to say—

(a) A person who exposes or offers any such article for sale by retail shall at the time when it is so exposed or offered either cause the article to be labelled in accordance with the Rules set out in the said Second Schedule, or cause a notice to the effect that the article contains preservative to be exhibited in a conspicuous place so as to be easily readable by a customer ; and

(b) A person who sells any such article shall cause it to be labelled in accordance with the said Rules at the time when it is delivered to any purchaser, agent or broker :

Provided that—

(i) Neither the requirement mentioned in paragraph (a) nor that mentioned in paragraph (b) shall apply where the article is exposed or offered for sale by retail or delivered to a customer in a hotel, restaurant or other such place for consumption on the premises ; and

^(t) Public Health (Preservatives, etc., in Food) Regulations (Scotland), 1921 ; S.R. and O., 1921, No. 814, as amended in 1926 (S.R. and O., 1926, No. 1603) and in 1927 (S.R. and O., 1927, No. 623).

- (ii) The requirement mentioned in paragraph (b) shall not apply where the article is sold by retail and delivered to the purchaser at the vendor's premises or stall if such a notice as is mentioned in paragraph (a) is there exhibited as provided in that paragraph.

The provisions relating to the labelling of articles of food which contain preservative and of preservatives themselves are contained in the Second Schedule to the Regulations, *infra*.

**Public Health (Preservatives, etc., in Food) Regulations,
1925 to 1940.**

Second Schedule.

Labelling of Articles of Food containing Preservative and of Preservatives.

- 1—The articles of food containing preservative to which the Rules as to labelling set out in this Schedule apply are sausages, sausage-meat, coffee extract, pickles and sauces, and (where the proportion of benzoic acid exceeds 600 parts per million) grape juice and wine.
- 2—(1) Where any of the said articles of food contains preservative it shall bear a label on which is printed the following declaration or such other declaration substantially to the like effect as may be allowed by the Minister :—

(a)	CONTAIN(S) PRESERVATIVE
-----	----------------------------

- (2) The declaration shall be completed by inserting at (a) the word " This " or " These," followed by the name of the food as used in paragraph 1 of this Schedule.
- (3) In the case of grape juice or wine to which these Rules apply there shall be added to the declaration the words " and is not intended for use as a beverage."
- 3—(1) An article sold as a preservative shall bear a label on which is printed the following declaration or such other declaration substantially to the like effect as may be allowed by the Minister :—

(a) THIS PRESERVATIVE CONTAINS PER CENT. OF SULPHUR DIOXIDE
--

- (2) Where the article contains benzoic acid the words " Benzoic acid " shall be submitted for the words " Sulphur dioxide."
- (3) The declaration shall be completed by inserting at (a) in words and figures, excluding fractions (*e.g.* " seventy (70) ") the true percentage of the sulphur dioxide or benzoic acid present in the article.
- 4—The prescribed declaration shall in each case be printed in dark block type upon a light-coloured ground within a surrounding line and no other matter shall be printed within such surrounding line. The type used shall be not less than one-eighth of an inch in height, or, in the case of grape juice or wine to which these Rules apply, one-sixteenth of an inch in height.

- 5—The label shall be securely affixed to the article or be part of or securely affixed to the wrapper or container, and in any case shall be so placed as to be clearly visible. If the article bears a label containing the name, trade mark, or design representing the brand of the article or the name and address of the manufacturer or dealer the prescribed declaration shall on and after the 1st day of July, 1927, be printed as part of such label.
- 6—No comment on or explanation of the prescribed declaration (other than any direction as to use in the case of a preservative) shall be placed on the label or on the wrapper or container.

Where an article of food specified in Part 1 of the First Schedule, *supra*, otherwise than in item 4, is used in the preparation of any other article of food, the latter article may contain any preservative necessarily introduced by the use of the former article, but the total proportion of any one preservative contained in any article of food specified in that Part of the Schedule must not exceed the proportion therein specified(*u*). The Regulations do not apply so as to prohibit the presence of sulphur dioxide in any article of food other than meat if it is shown either—

- (a) that the article not being an article specified in Part I of the First Schedule is intended to be used in the preparation of an article which is so specified ; or
- (b) that the article being itself an article so specified, other than fruit or fruit pulp, is intended to be so treated before it is sold or exposed for sale by retail as to comply with the provisions of the Schedule as regards the proportion of sulphur dioxide contained(*v*).

Nor do the Regulations apply—

- (a) so as to prohibit the presence in bacon, ham and cooked pickled meat of any added sodium or potassium nitrite ;
- (b) so as to prohibit the presence in any article of food of sodium or potassium nitrite introduced in the preparation of such article by the use of any bacon, ham or cooked pickled meat containing sodium or potassium nitrite(*w*).

No person may manufacture for sale or sell any cooked pickled meat intended for human consumption, other than bacon or ham, which contains sodium or potassium nitrite in proportions exceeding 200 parts per million calculated as sodium nitrite(*x*). The Ministry of Health have intimated that the amount of nitrites which may be contained in cooked pickled meat other than bacon and ham may not exceed in all 200 parts per million, including both nitrites which may be derived from any sodium or potassium nitrate (saltpetre) and nitrites added directly(*y*).

(*u*) Article 4(I)(ii), Public Health (Preservatives, etc., in Food) Regulations, 1925 ; S.R. and O., 1925, No. 775. (*v*) *Ibid*, Article 4(I)(iii).

(*w*) *Ibid*, Article 4(I)(iv) ; inserted by S.R. and O., 1940, No. 633.

(*x*) *Ibid*, Article 4(4) ; inserted by S.R. and O., 1940, No. 633.

(*y*) Circular 1892, Ministry of Health, 25th October, 1939.

It should be noted that many of the foodstuffs which previously contained preservatives may not now do so. These include—

- Dairy products (milk, cream, butter, margarine, cheese) ;
- Meat products (brawn, bacon and ham, meat, potted meat) ;
- Fish and potted fish ; and
- Confectionery (cake, lemon curd, mincemeat).

It should also be observed that such substances as formaldehyde, salicylic acid and fluorides are now definitely prohibited from use as preservatives in all foods.

In 1927(z) the Ministry of Health drew attention to the fact that traces of some of the prohibited preservatives and colouring matters are naturally present in certain foods, *e.g.* boric acid and benzoic acid in some fruits, and copper in peas and other vegetables, but the quantities so present are usually insignificant, being much less than those which would be required for effective preservation or artificial colouring. It is important, therefore, that before proceedings are instituted in respect of the presence of *small* quantities of prohibited preservatives every care should be taken to be sure that the preservative has been *added* to the food and that it is not naturally present in it.

Emergency provisions.—Where any person under the authority and in accordance with the terms of a licence granted by or on behalf of the Minister of Food, manufactures for sale any of the following articles of food—

- i—meat which contains sulphur dioxide ;
- ii—margarine which contains borax ;
- iii—bacon(a) which contains borax ;
- iv—dehydrated vegetables which contain sulphur dioxide ; or
- v—jam which contains sulphur dioxide,

the manufacture or sale of the article does not constitute a contravention under Article 4 of the Regulations (see *ante*, p. 185), by reason only that—

- i—in the case of jam, the article contains sulphur dioxide exceeding the proportion specified in Part I of the First Schedule of the Regulations of 1925 to 1940 (see *ante*, p. 182) ; or
- ii—in the case of any of the other foods listed above, the article contains sulphur dioxide or borax, as the case may be(b).

(z) Circular 806, Ministry of Health, 29th June, 1927.

(a) " Bacon " includes ham and any other part of the carcase of a pig (except the offals, the feet and the head without the chops) which—

(i) has been subjected to a dry-curing process, or to a process of pickling for a period exceeding 48 hours, or has matured after removal from pickle for a period exceeding 48 hours ; or

(ii) has been cured in any other way but is not pickled pork—

Paragraph 12, Defence (General) Regulation 60CAA ; S.R. and O., 1944, No. 1311.

(b) *Ibid*, paragraph 2.

The sale of any article of food listed above which has been manufactured by the Minister of Food does not constitute a contravention of Article 4 of the Regulations(c).

The manufacture for sale or sale of any article of food which contains any sulphur dioxide or borax necessarily introduced by the use in its manufacture of—

- i—any meat, margarine, bacon, dehydrated vegetables or jam the manufacture or sale of which is made lawful by paragraph (2) of Regulation 60CAA, *supra* ;
- ii—any meat, margarine, bacon, dehydrated vegetables or jam manufactured by the Minister of Food ;
- iii—any bacon the importation of which is made lawful by paragraph (4) of Regulation 60CAA (see *post*, p. 189) ; or
- iv—any dehydrated vegetables the importation of which is made lawful by paragraph (5) of Regulation 60CAA (see *post*, p. 189),

does not constitute a contravention of Article 4 of the Regulations by reason only that the article contains sulphur dioxide or borax, as the case may be, necessarily introduced in its manufacture(d).

The following preservatives may be added to the foods specified, in accordance with emergency legislation issued by the Ministry of Food :—

(i) **Margarine**—borax or boric acid, subject to a licence from the Minister of Food(e).

(ii) **Bacon and ham**—borax or boric acid, subject to a licence from the Minister of Food, provided that on exposure or offer for sale by retail a clear disclosure is made by label or poster (this proviso is, however, suspended until the Minister of Food otherwise directs(f)). The expression “*bacon*” includes hams and any other part of the carcass of a pig, excluding the offals, the feet and the head (without the chaps) which has been cured in any way, but does not include pork(g), provided that bacon is deemed to include and pickled pork not to include any part of the carcass of a pig which has been subjected to a dry-curing process or to a process of pickling for a period exceeding 48 hours or which has matured after removing from pickle for a period exceeding 48 hours(h).

(iii) **Meat**—under the Meat (Addition of Preservative) Order, 1941(i), meat may contain sulphur dioxide as a preservative, subject to the authority of the Minister of Food and in accordance with any directions given by him.

(iv) **Fruit pulps**—the maximum amount of preservative solution which may be added to certain cooked and raw fruit

(c) *Ibid*, paragraph 3.

(e) S.R. and O., 1940, No. 982.

(g) Bacon (Addition of Borax) Order, 1940 ; S.R. and O., 1940, No. 547.

(h) S.R. and O., 1940, No. 1833.

(d) *Ibid*, paragraph 6.

(f) S.R. and O., 1942, No. 1372.

(i) S.R. and O., 1941, No. 1395.

pulps has been prescribed as follows, but the final sulphur dioxide content of the preserved pulp must not exceed the figure of 1,500 parts per million prescribed by the Regulations (see *ante*, p. 182) :—

Maximum permitted quantities of added Water and Preservative Solution.

Description of Fruit Pulp.	Maximum permitted quantity of added water per cwt. of fruit.	Maximum permitted quantity of preservative solution per cwt. of fruit.
(a) <i>Cooked pulps</i>		
Blackcurrant	1½ gallons	3 pints
Redcurrant		
Whitecurrant		
Gooseberry		
Plum		
Apple		
Rhubarb		
(b) <i>Raw pulps</i>		
Strawberry ..	1 gallon	3 pints
Raspberry } ..	none	3 pints
Loganberry }		
Cherry ..	4 gallons	5 pints
Plum ..	6 gallons	5 pints
Blackberry ..	none	3 pints

For the purpose of the above Table "plum" includes damson and greengage(*k*).

(v) **Citrus fruit.**—The sale of citrus fruit or the importation of such fruit into the United Kingdom in wrappers treated with diphenyl, in consequence of which the fruit contains diphenyl, is not an offence under Article 4 or Article 11 of the Regulations of 1925 to 1940, provided that the importation is authorised by or on behalf of the Minister of Food and the wrappers only contain such quantity of diphenyl as is so authorised(*l*).

The extent of the relaxations of the Preservatives Regulations and the quantity limits in force are as follows :—

Meat.—Preservative is applied in a limited number of cases under the control of Ministry of Food officers in Government slaughterhouses. The process consists in rubbing down

(*k*) Fruit Pulp (Control and Maximum Prices) Order, 1943 ; S.R. and O. 1943, No. 1125 ; Article 3 and First Schedule.

(*l*) Paragraph 1, Defence (General) Regulations, 1939, No. 60CAA ; S.R. and O., 1944, No. 1311.

the surface of the meat with a solution containing 2 per cent. of SO_2 . Owing to the nature of the process it is not practicable to specify any limit to the amount contained in the meat, but in view of the solution strength the quantities absorbed are very slight.

Margarine.—The maximum addition permitted by licence under the Margarine (Addition of Borax) Order, 1940, was 0.25 per cent. of borax, including boric acid and other borates (expressed as boric acid). It is intended to continue this limit under Regulation 60CAA.

Bacon.—The addition of borax is permitted only for imported produce. As in the case of meat it is not practicable to prescribe any maximum quantity, and the controlling factor lies in the nature of the permitted process, namely, the external dusting of the bacon with powdered borax. When the borax on the surface of the meat is washed off in the usual way only negligible traces of the preservative should remain.

Jam.—The maximum quantity now permitted by Ministry of Food licences is 100 parts per million instead of the 40 parts per million which has hitherto been lawful.

Oranges.—In those cases where the Ministry purchasing arrangements make provision for oranges in diphenyl-treated wrappers, and their importation is authorised accordingly, the maximum content of diphenyl which will be permitted in the orange wrappers will be 40 mgs. per 100 square inches.

Dehydrated vegetables.—The following are the quantity limits which have been prescribed by licence:—

<i>Description of dehydrated vegetables.</i>						<i>Maximum permitted quantity of sulphur dioxide in parts per million.</i>
Cabbage	..	..	..	..	..	3,000
Potatoes (including mashed potato powder)						500
Beans	..	..	..	..	..	2,000
Turnips	..	..	..	..	..	2,000
Spinach	..	..	..	..	..	2,000
Swedes	..	..	..	..	..	2,000(m)

THICKENING SUBSTANCES.

No person may sell cream which contains any "thickening substance" (n), such expression meaning sucrate of lime, gelatine, starch paste or any other substance which, when added to cream, is capable of increasing its viscosity, but it

(m) Circular FSL/9/45, Ministry of Food, 12th February, 1945.

(n) Article 4(3), Public Health (Preservatives, etc., in Food) Regulations, 1925, S.R. and O., 1925, No. 775.

does not include cane or beet sugar(o). The term "cream" means that portion of milk rich in milk fat which has been separated by skimming or otherwise and is intended for human consumption(o).

COLOURING MATTER.

The Regulations of 1925 to 1940 prohibit the manufacture for sale or sale of any article of food which contains any added colouring matter specified in Part 11 of the First Schedule, *infra*.

Public Health (Preservatives, etc., in Food) Regulations, 1925 to 1940.

First Schedule.

Part II—Colouring matters which may not be added to Articles of Food.

1—Metallic Colouring Matter.

Compounds of any of the following metals :—

Antimony,	Copper,
Arsenic,	Mercury,
Cadmium,	Lead,
Chromium,	Zinc.

2—Vegetable Colouring Matter. Gamboge.

3—Coal Tar Colours.

Number in Colour Index of Society of Dyers and Colourists, 1924.	Name.	Synonyms.
7	Picric acid	Carbazotic acid
8	Victoria yellow	Saffron substitute ; dinitrocresol
9	Manchester yellow	Naphthol yellow ; martius yellow
12	Aurantia	Imperial yellow
724	Aurine	Rosolic acid ; yel- low coralline

Apart from milk, to which no colouring matter may be added(p), colouring matter, other than those specified in Schedule 1, *supra*, may be added to foods, provided they are not intended to conceal inferior quality and are not injurious to health.

(o) Article 2(1), Public Health (Preservatives, etc., in Food) Regulations, 1925, S.R. and O., 1925, No. 775.

(p) Sect. 100, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 313.

OFFENCES.

The following are the offences against the Regulations of 1925 to 1940 :—

- 1—No person may manufacture for sale or sell any article of food which contains any added preservative except those specified in Part I of the First Schedule(*q*) ;
- 2—No person may manufacture or sell any article of food which contains any added colouring matter specified in Part II of the First Schedule(*q*) ;
- 3—No person may sell cream which contains any thickening substance(*r*).
- 4—No person may sell any article which is recommended in any mark or label placed thereon or on its receptacle or container for use as a preservative of, or colouring matter for, any article of food, or is described or referred to in any such mark or label in terms likely to lead to its being so used—
 - (a) if such use would be contrary to the Regulations ; or
 - (b) if in the case of a preservative it is not labelled in accordance with the Rules set out in the Second Schedule(*s*) ;
- 5—No person may on or in connection with the sale of any article or in any advertisement, circular or notice relating thereto, recommend it for use as a preservative of, or colouring matter for, any article of food, or describe or refer to it in terms likely to lead to its being so used, if such use would be contrary to the Regulations(*t*) ;
- 6—No person may sell any article which is recommended in any mark or label as is mentioned in paragraph 5, *supra*, for use as a thickening substance for cream or is described or referred to in any such mark or label in terms likely to lead to its being so used, and no person shall on or in connection with the sale of any article or in any advertisement, circular or notice relating thereto recommend it for use as a thickening substance for cream or describe or refer to it in terms likely to lead to its being so used(*u*) ; and

(*q*) Article 4(1), Public Health (Preservatives, etc., in Food) Regulations, 1925 ; S.R. and O., 1925, No. 775.

(*r*) *Ibid*, article 4(3).

(*t*) *Ibid*, article 5(2).

(*s*) *Ibid*, article 5(1).

(*u*) *Ibid*, article 5(3).

7—Quite apart from the specific offences, detailed in the previous paragraphs and prescribed by the Regulations, such offences may also constitute contraventions of the provisions of the Act of 1938, relating to the adulteration of food(v).

It should be noted that contraventions of the Regulations of 1925 to 1940 need not be "wilful" as was the case before the passing of the Act of 1938. Prior to that date offences were punishable under the Public Health Act, 1896(w), which was subsequently replaced by section 143 of the Public Health Act, 1936(x), which provided for "wilful" neglect of the provisions of the Regulations to be proved before a conviction could be recorded. This is now no longer the case, section 101(3)(y) of the Act of 1938 making it clear that any person who is guilty of a contravention of, or non-compliance with, any provision of the Regulations, is guilty of an offence against the Act. With regard to new Regulations, section 92 of the Act of 1938(z) authorises the Minister to include provisions relating to offences, and it would seem that he is empowered, if he thinks fit, to make certain offences punishable only if the defendant acts wilfully.

Instead of, or in addition to, taking proceedings against the seller, proceedings may be taken against any previous seller of the article, notwithstanding that the sale by such previous seller took place outside the district of the authority instituting proceedings, and for the purpose of any such proceedings the sale by the previous seller is deemed to have taken place within the district of the authority and the proceedings may be taken either before a court having jurisdiction within that district or before a court having jurisdiction in the place where the sale actually took place(a). It has been held that it is not necessary to follow the procedure laid down in section 70 of the Act of 1938 (see *ante*, p. 55) relative to the division of samples, etc., in the case of a sale by a manufacturer or wholesaler(b).

The provisions of the Regulations of 1925 to 1940 with respect to prohibiting any preservative or colouring matter or thickening substance in articles of food and requiring the labelling of certain foods and of articles sold as preservatives,

(v) Sects. 1 and 3, Food and Drugs Act, 1938; 31 Halsbury's Statutes 254; and see *ante*, pp. 112, 116.

(w) 13 Halsbury's Statutes 871.

(x) 29 Halsbury's Statutes 427.

(y) 31 Halsbury's Statutes 317; and see *ante*, p. 160.

(z) 31 Halsbury's Statutes 309; and see *ante*, p. 8.

(a) Article 7, Public Health (Preservatives, etc., in Food) Regulations 1925; S.R. and O., 1925, No. 775; and see sect. 83, Food and Drugs Act 1938; 31 Halsbury's Statutes 305; and see *ante*, p. 13.

(b) *Twynham v. Badcock*, [1932] 2 K.B. 549; Digest Supp.

do not apply in the case of any article which is intended to be exported or re-exported or intended for use as ships' stores(c).

The certificate of the Government Chemist or the public analyst must be accepted as sufficient evidence of the facts stated therein unless the defendant requires that the person who made the examination shall be called as a witness. The burden of proof that any article in respect of which proceedings for a contravention of the Regulations have been taken is intended for export or re-export or for use as ships' stores, or is sold for consumption on the premises (see article 4(2)(i), *ante*, p. 183), is on the defendant(d).

A person found guilty of an offence against the Regulations of 1925 to 1940 is liable, in the case of a first offence, to a fine not exceeding £20 and, in the case of a subsequent offence, to a fine not exceeding £100 or to imprisonment for a period not exceeding 3 months, or to both fine and imprisonment(e).

IMPORTED ARTICLES OF FOOD.

The special provisions relative to the importation of articles of food are contained in Part III of the Regulations, *infra*.

Public Health (Preservatives, etc., in Food) Regulations, 1925 to 1940.

Article 8—(1) Subject to any directions by the Commissioners of Customs and Excise after consultation with the Minister, the Officers of Customs and Excise shall have power to enforce and execute this Part of these Regulations and may take such samples as may be necessary of consignments of imported articles to which these Regulations apply.

(2) Where an Officer of Customs and Excise takes a sample for the purpose of analysis he shall send the sample or a portion thereof to the Government Chemist, and either the officer or the Government Chemist shall send a portion of the sample to the importer.

Article 9—(1) The following authorities and any officers authorised by them in writing shall also have power to enforce and execute this Part of these Regulations, namely :—

(a) Where the article of food is landed from a ship or aircraft in a place which is not within the jurisdiction of a port health authority, or where the article is imported in a vehicle and the Customs examination of that vehicle is deferred with the consent of the Commissioners of Customs and Excise until the vehicle reaches a place outside such jurisdiction, the Council of the Borough (including the City of London and a Metropolitan Borough) or urban or rural district in which such place is situated.

(b) In every other case, the port health authority.

(c) Art. 12, Public Health (Preservatives, etc. in Food) Regulations, 1925 ; S.R. and O., 1925, No. 775.

(d) *Ibid*, Art. 13.

(e) Sect. 79, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 303.

- (2) Every officer authorised as aforesaid may take such samples as may be necessary of consignments of imported articles to which these Regulations apply, and where he takes a sample for the purpose of analysis he shall send the sample or a portion thereof to a public analyst and either the officer or the analyst shall send a portion of the sample to the importer.
- (3) Where the duties of an Officer of Customs and Excise with regard to the examination of a cargo or consignment comprising an article of food have not been wholly discharged, a sample of that article shall not be taken without his consent, but every officer of Customs and Excise shall afford such facilities as the circumstances require for the taking of samples in pursuance of this Article.

Article 10—If in any case the Commissioners of Customs and Excise or a port health authority, or other authority executing this Part of these Regulations are of opinion that an offence against this Part of these Regulations has been committed, they shall communicate to the Minister for his information the name of the importer and such other facts as they may possess or may obtain as to the destination of the consignment.

Article 11—(1) No person shall import into England and Wales any article of food intended for sale which contains any added preservative or any added colouring matter being one of those specified in Part II of the First Schedule to these Regulations :

Provided that—

- (i) any article of food specified in Part I of the said Schedule may contain preservative of the nature and in the proportion therein specified ;
 - (ii) where an article of food specified in Part I of the said Schedule otherwise than in item 4 thereof is used in the preparation of any other article of food, the latter article may contain any preservative necessarily introduced by the use of the former article, but the total proportion of any one preservative contained in any article of food specified in that Part of the Schedule shall not exceed the proportion therein specified ;
 - (iii) the provisions of this Article shall not apply so as to prohibit the presence of sulphur dioxide in any article of food other than meat if it is shown either—
 - (a) that the article not being an article specified in Part I of the said Schedule is intended to be used in the preparation of an article which is so specified, or
 - (b) that the article being itself an article so specified, other than fruit or fruit pulp, is intended to be so treated before it is sold or exposed for sale by retail as to comply with the provisions of the Schedule as regards the proportion of sulphur contained(*f*) ;
- (2) No person shall import into England or Wales any cream intended for sale which contains any thickening substance.

(*f*) Inserted by S.R. and O., 1940, No. 633.

- (3) No person shall import into England and Wales any cooked pickled meat intended for sale for human consumption, other than bacon and ham, which contains sodium or potassium nitrite in proportions exceeding two hundred parts per million calculated as sodium nitrite(*f*).

It should be noted that although the duty of enforcing the provisions of the Regulations relating to the importation of food is primarily the concern of the Commissioners of Customs and Excise, port health authorities are also empowered to do so. In the case of a ship or aircraft(*g*) which lands food in a place which is not within the jurisdiction of a port health authority, the local authority (see *ante*, p. 18) of the area concerned is empowered to enforce and execute Part III of the Regulations. This is in conflict with the provisions relating to the enforcement and execution of the remainder of the Regulations. As pointed out previously (see *ante*, p. 180), food and drugs authorities(*h*) are the authorities for the purposes of the Regulations of 1925 to 1940. It states clearly, however, in Article 9, *supra*, that in the case of imported food—either by ship or aircraft—arriving at a place outside the jurisdiction of a port health authority, the local authority—borough, urban or rural district council—has the power to enforce and execute Part III of the Regulations. In such areas therefore, two authorities may be functioning side by side, viz. :—

- 1—the “ food and drugs ” authority in respect of the whole of the Regulations of 1925 to 1940, *except Part III* ; and
- 2—the “ local authority ” in respect of *Part III only*.

In actual practice, however, it is unlikely that there will be many cases where a local authority will be called upon to exercise their powers in respect of Part III of the Regulations, unless or until the transport of food by aircraft increases.

Emergency provisions.—Where the importation of bacon or of any article of food in the manufacture of which bacon has been used, is authorised by or on behalf of the Minister of Food, it is not a contravention of Article 11 of the Regulations, *supra*, by reason only that the imported article contains borax not exceeding the quantity authorised by the Minister(*i*). Similarly, with regard to dehydrated vegetables(*k*). It is not an offence to sell any article of imported food containing preservative, the importation of which is made lawful by the above provisions(*l*).

(*f*) See footnote, p. 194.

(*g*) As to aircraft generally, see the author's “ *Sanitary Administration*,” Second Edition, London, Butterworth & Co. Ltd., p. 461, *et seq.*

(*h*) As defined in sect. 64, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 292 ; and see *ante*, p. 18.

(*i*) Paragraph 4, Defence (General) Regulations, 1939, No. 60CAA ; S.R. and O., 1944, No. 1311.

(*k*) *Ibid*, paragraph 5.

(*l*) *Ibid*, paragraph 7.

USE OF PRESERVATIVE AGENTS IN THE CLEANSING OF MILK VESSELS.

Article 21 of the Milk and Dairies Order, 1926 (see *post*, p. 383), which relates to the cleansing and sterilisation of milk vessels, originally provided that no oxidising or preservative agent could be used for this purpose, but by Provisional Regulations(*m*) this prohibition was modified so as to allow of the use of solutions of sodium hypochlorite approved by the Minister of Agriculture and Fisheries, provided that all traces must be removed before any vessel, lid or appliance is brought into contact with milk. In an explanatory Circular(*n*) it was made clear that this relaxation in the original Order is due to temporary war-time difficulties (see *post*, p. 383), and it may be that the use of hypochlorite solutions will again be prohibited when conditions become more normal.

REGISTRATION OF FOOD PREMISES.

As to the registration of premises used in connection with the manufacture of preserved food, see section 14 of the Act of 1938, dealt with in detail in Chapter 19, *post*, p. 465.

(*m*) 21st May, 1943.

(*n*) Circular 2819, Ministry of Health, May, 1943.

CHAPTER 7.

PROVISIONS RELATING TO CERTAIN FOODS.

The sale, etc., of the foods dealt with in this chapter is subject to the provisions of the Act of 1938 relating to adulteration (see Chapter 5, *ante*, p. 111). Accordingly, proceedings may be taken in respect of any of these articles found not to be of the nature, substance or quality demanded(*a*), or which has had added to it some substance which would render it injurious to health(*b*), in addition to proceedings under the special provisions detailed in this chapter.

MARGARINE, MARGARINE-CHEESE, BUTTER AND MILK-BLENDED BUTTER.

It is the duty of every food and drugs authority (see *ante*, p. 19) to enforce the provisions of sections 32 to 36 of the Act of 1938 relating to margarine, margarine-cheese, butter and milk-blended butter(*c*), and persons found guilty of offences in respect of these articles are liable to penalties in accordance with section 79 of the Act of 1938 (see *ante*, p. 12). The appropriate provisions of section 83 of the Act of 1938 (relating to defences available to a defendant where some other person is responsible for the commission of the offence charged—see *ante*, p. 13) ; section 84 (relating to conditions under which a warranty may be pleaded as a defence—see *ante*, p. 175) ; and section 85 (relating to offences in respect of warranties and certificates of analysis—see *ante*, p. 176), apply to offences in respect of margarine, margarine-cheese, butter and milk-blended butter.

As to the sampling of margarine, margarine-cheese, butter and milk-blended butter, see Chapter 4, *ante*, p. 50. It should be noted that a sampling officer (see *ante*, p. 51) may take samples of any butter or cheese, or substances resembling butter or cheese, exposed for sale and not marked in the manner in which margarine, milk-blended butter or margarine-cheese is required to be marked under the Act of 1938 (see *post*, p. 201), without going through the form of purchase(*d*). If a sampling officer has reason to believe that any container forwarded by a public conveyance contains margarine, margarine-cheese, or milk-blended butter which is not consigned in

(a) See sect. 3, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 254 ; and see *ante*, p. 116.

(b) See *ibid*, sect. 1 ; 31 Halsbury's Statutes 254 ; and see *ante*, p. 112.

(c) *Ibid*, sect. 65 ; 31 Halsbury's Statutes 293 ; and see *ante*, p. 21.

(d) *Ibid*, sect. 68(3) ; 31 Halsbury's Statutes 294.

accordance with the provisions of section 33 of the Act of 1938 (see *post*, p. 201), he may examine and take samples of the contents of the container(*e*).

Section 73 of the Act of 1938, *infra*, contains the powers of the officers of the Ministry of Agriculture as to the inspection of premises where butter, margarine, margarine-cheese, or milk-blended butter is produced or subjected to treatment. Such officers may take samples for analysis, but it should be noted that sampling officers of local authorities have no such power of inspection and sampling. Where a local authority wish an inspection carried out or samples taken, the matter should be reported to the Ministry for the necessary action.

Section 73, Food and Drugs Act, 1938.—Powers of Minister of Agriculture as to inspection of premises where margarine, milk-blended butter, etc., produced or subjected to treatment.

- (1) An officer of the Minister of Agriculture and Fisheries shall, on producing, if so required, some duly authenticated document showing his authority, have power to enter at all reasonable times any premises registered under section thirty-four of this Act, and to inspect any process of manufacture, blending, reworking, or treatment carried on therein, and to take samples of any butter, margarine, margarine-cheese, or milk-blended butter, or of any substance capable of being used in the manufacture, treatment or adulteration of any of those articles.
- (2) If the Minister of Agriculture and Fisheries has reason to believe—
 - (a) that any process of manufacture, blending, reworking, or treatment, or any wholesale dealing, being a process or dealing which under this Act may not be carried on except on registered premises, is being carried on on any premises not registered for the purpose in question ; or
 - (b) that on any premises butter is by way of trade either made or stored, and that for the purposes of this Act inspection is desirable,

he may specially authorise any of his officers to enter the premises, and in that case the officer shall have the like powers of entry, inspection, and sampling as if the premises were registered.

Imported margarine, margarine-cheese, butter and milk-blended butter.—Special provisions with respect to these imported products are contained in section 40 of the Act of 1938(*f*), the details of which will be found in Chapter 13 (see *post*, p. 332).

(a) MARGARINE.

Margarine is defined as meaning any food, whether mixed with butter or not, which resembles butter and is not milk-blended butter(*g*).

(*e*) See Food and Drugs Act, 1938, sect. 68(6) ; 31 Halsbury's Statutes 295.

(*f*) 31 Halsbury's Statutes 279 ; and see *post*, p. 333.

(*g*) Sect. 100, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 313.

Composition.—It is an offence(*h*) under the Act of 1938 to sell, or offer or expose for sale, or have in possession for the purpose of sale, any margarine which contains more than 16 per cent. of water, or the fat of which contains more than 10 per cent. of fat derived from milk. Any label or advertisement which states or suggests that the margarine with which it is given, or to which it relates, contains butter, must state the percentage of butter which it contains, but no offence is committed if the figure does not differ by more than 2 per cent. from the actual percentage. Any person who gives with any margarine sold by him a label, whether attached to or printed on the wrapper or container or not, which does not comply with the above requirement, or who publishes, or is a party to the publication of, an advertisement which does not comply therewith, is guilty of an offence(*i*). Margarine may be composed of animal or vegetable fats, or both, but it need not contain any animal fat(*k*). A vendor cannot plead that margarine containing water in excess of 16 per cent. is, by virtue of the statutory definition (see *supra*), genuine margarine and that it is not adulterated(*l*). In other words, the standard referred to above is an absolute standard. In a case(*m*) where a substance was sold as “a very good mixture of butter and margarine” and was found to contain 80 per cent. of margarine, 15½ per cent. of water, salt, etc., and only 4½ per cent. of butter, the court held that no offence had been committed in view of the fact that the Act prohibited the sale of margarine containing more than 10 per cent. of butter fat.

Margarine may not contain any preservative(*n*), except during the war emergency, when it may contain borax or boric acid, subject to the granting of a licence by the Minister of Food(*o*).

Margarine factories, etc.—Section 34 of the Act of 1938, *infra*, requires premises used as a factory for the manufacture of margarine or for carrying on the business of a wholesale dealer in margarine, to be registered by the food and drugs authority for the purpose in question. Where a person who is registered in respect of premises used as a margarine factory or for carrying on the business of a wholesale dealer in margarine, dies, the registration enures for the benefit of his widow, or any other member of his family, until the expiration of 2

(*h*) See *ante*, p. 12, as to offences.

(*i*) Sect. 32, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 273.

(*k*) *Wilkinson v. Alton* (1908), 99 L.T. 119 ; 25 Digest 122, 442.

(*l*) *Burton & Sons v. Mattinson* (1902), 86 L.T. 770 ; 25 Digest 123, 450

Roberts v. Leeming (1905), 69 J.P. 417 ; 25 Digest 88, 150.

(*m*) *Anness v. Grivell*, [1915] 3 K.B. 685 ; 25 Digest 89, 154.

(*n*) See Chapter 6, *ante*, p. 177.

(*o*) Margarine (Addition of Borax) Order, 1940 ; S.R. and O., 1940, No.

months from his death, or until the expiration of such longer period as the registering authority may allow(*p*).

Section 34, Food and Drugs Act, 1938.—Registration of factories and wholesale premises.

(1) No premises shall be used—

- (a) as a factory of margarine, margarine-cheese, or milk-blended butter ;
 - (b) for carrying on the business of a wholesale dealer in margarine, margarine-cheese, or milk blended butter ;
or
 - (c) as a butter factory, that is to say, a place at which by way of trade butter is blended, reworked or subjected to any other treatment, but not so as to cease to be butter, unless they are registered by the Food and Drugs authority for the purpose in question.
- (2) Subject to the provisions of the next succeeding subsection, a Food and Drugs authority shall, on the application of the occupier of, or of a person proposing to occupy, any premises, register those premises for the purpose of this section.
- (3) Premises shall not be registered or used as a butter factory if they form part of, or communicate otherwise than by a highway with, any other premises which are required to be registered under paragraph (a) or paragraph (b) of subsection (1) of this section.
- (4) A person who on premises not registered for the purpose in question carries on any such manufacture, business or trade as is mentioned in subsection (1) of this section, or who uses any premises as a butter factory in contravention of the provisions of the last preceding subsection, shall be guilty of an offence.
- (5) Upon any change in the occupation of premises registered under this section, the incoming occupier shall, if he intends to use them for the purpose for which they are registered, forthwith give notice of the change to the Food and Drugs authority, who shall thereupon make any necessary alteration in their register.
- If a person required to give a notice under this subsection fails to do so, he shall be liable to a penalty not exceeding five pounds.
- (6) A Food and Drugs authority shall forthwith give notice to the Minister of Agriculture and Fisheries of any registration of premises under this section, of any change in the occupation of registered premises and of the deletion from the register of any premises which have ceased to be used for the purpose for which they were registered.

There are no special provisions with respect to the manner of registration, as was the case under the repealed provisions of the Food and Drugs (Adulteration) Act, 1928(*q*), and the Order(*r*) made under that Act is not now in force.

(*p*) Sect. 97, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 312 ; and see *ante*, p. 15.

(*q*) Sect. 8(1) ; 8 Halsbury's Statutes 890.

(*r*) Registration of Manufacturers of Margarine and Margarine-Cheese Order, 1900 ; S.R. and O., 1900, No. 123.

Every occupier of a margarine factory and every wholesale dealer thereof must keep a register in accordance with section 35 of the Act of 1938, *infra*, showing the quantity and destination of each consignment of margarine sent out from his factory or place of business, and the register must be open to the inspection of any officer of the Minister of Agriculture. It was held, in a Scottish case, that the power to inspect records includes with it the right to take notes therefrom(s).

Section 35, Food and Drugs Act, 1938.—Register of consignments to be kept in factories, etc.

- (1) Every occupier of a factory of margarine, margarine-cheese, or milk-blended butter, and every wholesale dealer in any such substance, shall keep a register showing the quantity and destination of each consignment of margarine, margarine-cheese, or milk-blended butter, as the case may be, sent out from his factory or place of business, and the register shall be open to the inspection of any officer of the Minister of Agriculture and Fisheries.
- (2) If any such occupier or dealer—
 - (a) fails to keep such a register posted up to date ;
 - (b) wilfully makes in the register an entry which is false in any particular, or wilfully omits to enter in the register any particular which ought to be entered ; or
 - (c) refuses to produce the register when required to do so by an officer of the Minister of Agriculture and Fisheries, he shall be guilty of an offence.

Labelling and marking of margarine.—The sale of margarine is subject to detailed directions regarding labelling and marking, which are contained in section 33 of the Act of 1938, *infra*.

Section 33, Food and Drugs Act, 1938.—Conditions to be observed in dealings in margarine, margarine-cheese and milk-blended butter.

- (1) A person who sells, or forwards by any public conveyance, any margarine, margarine-cheese, or milk-blended butter, shall sell or consign it as margarine or margarine-cheese, or, in the case of milk-blended butter, under an approved name.
- (2) Every person dealing in margarine, whether wholesale or by retail, and whether as manufacturer, importer, consignor, consignee, commission agent or otherwise, shall conform to such of the following regulations as may be applicable, that is to say—
 - (a) every container containing margarine shall have the word "Margarine" branded or durably marked on the bottom and sides and also, if it be closed, on the top thereof, in block letters not less than three-quarters of an inch long, the brand or mark being on the container itself and not only on a label, ticket or other thing attached thereto ;

(s) *Hart v. Cohen and Van der Laan* (1902), 4 F. (Ct. of Sess.) 445 ; 25 Digest 126, c.

- (b) there shall be attached to every parcel of margarine exposed for sale by retail, in such manner as to be clearly visible to a purchaser, a label marked "Margarine" in printed block letters not less than one and a half inches long ;
- (c) margarine when sold by retail, save in a container branded or durably marked as aforesaid, shall be delivered to the purchaser in a paper wrapper, with the word "Margarine" printed on the outside of the wrapper, or, if more wrappers than one are used, on the outside of the outer wrapper, in block letters not less than half an inch long and distinctly legible, and the outside of that wrapper shall bear no other printed matter, except such matter as may be required by or under any enactment ;
- (d) margarine shall not be described on, or on a label enclosed within, any wrapper enclosing or container containing it, or on any label attached to a parcel thereof, or in any advertisement or invoice thereof, by any name other than either "Margarine," or a name combining the word "Margarine" with an approved fancy or other descriptive name printed in type not larger than, and in the same colour, as the letters of the word "Margarine."

- (3) The requirements of paragraphs (a), (b) and (c) of the last preceding subsection shall apply in relation to margarine-cheese and to persons dealing therein with the substitution of "Margarine-cheese" for "Margarine."

Provided that, where margarine-cheese is sold or dealt in otherwise than by retail, it shall be sufficient compliance with those requirements if it is itself conspicuously marked with the words "Margarine-cheese."

- (4) The requirements of the said paragraphs (a), (b) and (c) shall apply in relation to milk-blended butter and to persons dealing therein with the substitution of an approved name for the word "Margarine," but on the outside of the wrapper referred to in the said paragraph (c) there shall, in addition to the approved name, be printed in an approved manner an approved description of the article, setting out the percentage of water contained therein.
- (5) A person who contravenes any of the foregoing provisions of this section shall be guilty of an offence.
- (6) Any substance resembling butter or cheese which is exposed for sale and is not marked in the manner in which margarine, milk-blended butter or margarine-cheese is required by this section to be marked shall be presumed to be exposed for sale as butter or cheese, as the case may be.
- (7) In this section the expression "approved" means approved by the Minister of Agriculture and Fisheries, who, in approving for the purposes of this section names to be used in relation to margarine or milk-blended butter, shall not approve any name which refers to, or is suggestive of, butter or anything connected with the dairy interest.

It has been held that a tub at the back of a counter has to be labelled^(t). Although every "parcel" of margarine ex-

(t) *McNair v. Horan* (1904), 91 L.T. 555 ; 25 Digest 124, 454.

posed for sale by retail must be marked in accordance with subsection (2)(b), *supra*, it was held that a number of separate pieces, each 1 lb. in weight, may form one "parcel" and that one label on the stack is sufficient(u). Food stored behind a screen out of the sight of customers is not exposed for sale(v), but margarine contained in a wrapper on the shop counter is still exposed for sale(w). Margarine which is sold for consumption on the premises, *e.g.* spread on bread, need not be marked(x), but it should be noted that an offence is committed under section 3 of the Act of 1938(y) if the vendor, on being asked for "bread and butter" supplies bread and margarine. The expression "wrapper" in subsection (2)(c), *supra*, has been held to include the box, paper and band together in which the margarine was sold(z), and it was held to be an offence to gum on to the wrapper slips or labels containing other printing—even the price—and to print other matter on an opaque inner wrapper covered by a transparent outer cover on which the single word "margarine" was printed(a). During the present emergency the words "in block letters not less than half an inch long" in subsection (2)(c), *supra*, are replaced by the words "in block letters of a type at least as large as that of any other letters printed on the outside of that wrapper," and the words "and the outside of that wrapper shall bear no other printed matter, except such matter as may be required by or under any enactment" are omitted(b).

It will be noted that the Minister of Agriculture is not entitled to approve a "fancy or other descriptive name" if it refers to or is suggestive of butter or anything connected with the dairy interest (see subsection (7), *supra*). It was held in a Scottish case that the words "mixed with Maypole butter" on a wrapper were part of the name applied to the margarine(c), but the words "churned with fresh milk" were held not to constitute a fancy or descriptive name(d). These two decisions were reviewed in a further case in Scotland where the margarine was sold as "Charmo Margarine" with the addition of the words, in smaller letters, "containing a small quantity of butter." It was held that such words were merely descriptive

(u) *Parkinson v. McNair* (1905), 93 L.T. 553; 25 Digest 124, 455.

(v) *Crane v. Lawrence* (1890), 25 Q.B.D. 152; 25 Digest 124, 456.

(w) *Wheat v. Brown*, [1892] 1 Q.B. 418; 25 Digest 124, 457.

(x) *Moore v. Pearce's Dining and Refreshment Rooms*, [1895] 2 Q.B. 657; 25 Digest 124, 458.

(y) 31 Halsbury's Statutes 254; and see *ante*, p. 116.

(z) *Toler v. Bishop* (1895), 65 L.J.M.C. 4; 25 Digest 123, 453.

(a) *Millard v. Allwood*, [1912] 1 K.B. 590; 25 Digest 124, 461.

(b) Defence (General) Regulations, 1939, Regulation 60(C); S.R. and O., 1940, No. 698.

(c) *Maypole Dairy Co. v. Patterson*, [1923] S.C.(J.) 85; 25 Digest 125, s.

(d) *Hawes v. Stephens*, [1924] 2 K.B. 179; 25 Digest 125, 465.

and did not form part of a fancy name(*e*). Notwithstanding these decisions and the provisions of subsection (2)(d), *supra*, it is an offence under subsection (2)(c) to sell margarine with a wrapper on which an approved fancy name is printed if the wrapper is the only one or the outer wrapper(*f*). The two paragraphs of the subsection appear to be in conflict, but the purpose of paragraph (d) is to enable a fancy or descriptive name to be applied to a particular brand of margarine, either in advertisements displayed generally, on invoices, or on inner wrappers. It is quite clear, however, that the *outer* wrapper of margarine *sold by retail* may only contain the single word "Margarine," together with any other words required by statute to be printed on the wrapper.

(b) MARGARINE-CHEESE.

Margarine-cheese means any substance prepared in imitation of cheese and containing fat not derived from milk(*g*), whereas "cheese" means the substance usually known as cheese, containing no fat other than fat derived from milk(*g*).

Composition.—There are no special provisions relating to the composition of margarine-cheese. It consists of a substance prepared in imitation of cheese but containing fat not derived from milk(*h*).

Margarine-cheese may not contain any preservative(*i*).

Margarine-cheese factories, etc.—The provisions of section 34 of the Act of 1938 with respect to the registration of margarine factories and the premises of wholesale dealers in margarine, apply equally in the case of margarine-cheese factories and premises (see *ante*, p. 200). Similarly, the occupier of a margarine-cheese factory and every wholesale dealer thereof must keep a register showing the quantity and destination of each consignment of margarine-cheese sent out from his factory or place of business, in accordance with section 35 of the Act of 1938 (see *ante*, p. 201). Where a person who is registered in respect of premises used as a margarine-cheese factory or for carrying on the business of a wholesale dealer in margarine-cheese dies, the registration enures for the benefit of his widow, or any other member of his family, until the expiration of 2 months from his death, or until the expiration of such longer period as the registering authority may allow(*k*).

(*e*) *Somerville & Barr, Ltd. v. Chalmers*, [1925] S.C.(J.) 70; Digest Supp.

(*f*) See *Williams v. Baker*, [1911] 1 K.B. 566; 25 Digest 125, 463.

Millard v. Allwood, [1912] 1 K.B. 590; 25 Digest 124, 461.

(*g*) Sect. 100, Food and Drugs Act, 1938; 31 Halsbury's Statutes 313.

(*h*) *Ibid.*

(*i*) See Chapter 6, *ante*, p. 177.

(*k*) Sect. 97, Food and Drugs Act, 1938; 31 Halsbury's Statutes 312; and see *ante*, p. 15.

Labelling and marking of margarine-cheese.—The provisions of paragraphs (a), (b) and (c) of subsection (2) of section 33 of the Act of 1938 (see *ante*, p. 201) with respect to the marking of containers and parcels of margarine, and its sale by retail, apply in the case of margarine-cheese, provided that where margarine-cheese is sold or dealt in otherwise than by retail, it is sufficient compliance with those requirements if it is itself conspicuously marked with the words “margarine-cheese”(l). Any substance resembling cheese which is exposed for sale and is not “margarine-cheese” is presumed to be exposed for sale as cheese(m).

(c) BUTTER.

Butter means the substance usually known as butter, made exclusively from milk with or without salt or other preservative(n), and with or without the addition of colouring matter(o).

Composition.—It is an offence under the Act of 1938(p) to sell, or offer or expose for sale, or have in possession for the purpose of sale, any butter which contains more than 16 per cent. of water(q).

Butter may not contain any preservative(r).

Butter factories.—No premises may be used as a butter factory, that is to say, a place at which by way of trade butter is blended, reworked or subjected to any other treatment but not so as to cease to be butter, unless it is registered by the Food and Drugs authority, in accordance with the provisions of section 34 of the Act of 1938 (see *ante*, p. 200). There are no special provisions with respect to the manner of registration, as was the case under the repealed provisions of the Food and Drugs (Adulteration) Act, 1928(s), and the Order(t) made under that Act is not now in force. Premises may not be registered or used as a butter factory if they form part of or communicate otherwise than by a highway with, any other premises which are required to be registered either as a margarine, margarine-cheese, or milk-blended butter factory or where the business of a wholesale dealer in any of those substances is carried on(u).

(l) *Ibid*, sect. 33(3) ; 31 Halsbury's Statutes 275.

(m) *Ibid*, sect. 33(6) ; 31 Halsbury's Statutes 275.

(n) See Chapter 6, *ante*, p. 177, as to preservatives.

(o) Sect. 100, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 313.

(p) See *ante*, p. 12, as to offences.

(q) Sect. 32(1), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 273.

(r) See Chapter 6, *ante*, p. 177.

(s) 8 Halsbury's Statutes 884.

(t) Registration of Butter Factories, etc., Order, 1907 ; S.R. and O., 1907, No. 1021.

(u) Sect. 34(3), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 276.

Where a person who is registered in respect of premises used as a butter factory dies, the registration enures for the benefit of his widow, or any other member of his family, until the expiration of 2 months from his death, or until the expiration of such longer period as the registering authority may allow(*v*).

The occupier of a butter factory is guilty of an offence (see *ante*, p. 12) if any substance intended to be used for the adulteration of butter is found in a butter factory, and if any oil or fat capable of being so used is found in such a factory it is presumed to be intended to be so used, unless the contrary is proved(*w*).

Labelling and marking of butter.—There are no provisions relating to the labelling and marking of butter in the Act of 1938. As to the marking of imported butter, see the Merchandise Marks (Imported Goods) No. 1 Order, 1932(*x*).

(d) MILK-BLENDED BUTTER.

Milk-blended butter means any mixture produced by mixing or blending butter with milk(*y*).

According to Harvey and Hill(*z*) this type of butter finds little sale in Great Britain at the present time. It is manufactured from imported butter into which an additional quantity of milk has been worked after arrival in this country, but the presence of a large proportion of moisture seriously interferes with the keeping quality of the butter. Purvis and Hodgson, quoted by Harvey and Hill, *supra*, give the following typical analysis of milk-blended butter :—

Fat	..	..	..	74.2	per cent.
Curd	..	..	..	1.1	„
Salt	..	..	..	2.6	„
Water	..	..	..	22.1	„
				<hr/>	
				100.0	„
				<hr/>	

Composition.—A person may not sell, etc., any milk-blended butter which contains more than 24 per cent. of water(*a*).

Milk-blended butter may not contain preservative(*b*).

(*v*) See Food and Drugs Act, 1938, sect. 97 ; 31 Halsbury's Statutes 312 ; and see *ante*, p. 15.

(*w*) *Ibid*, sect. 36 ; 31 Halsbury's Statutes 277.

(*x*) S.R. and O., 1932, No. 128 ; and see *post*, p. 351.

(*y*) Sect. 100, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 313.

(*z*) Harvey, W. C. and Hill, H., *Milk Products*, 1937, London, H. K. Lewis & Co. Ltd., p. 178.

(*a*) Sect. 32, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 273 ; and see *ante*, p. 199.

(*b*) See chapter 6, *ante*, p. 177.

Milk-blended butter factories, etc.—The provisions of section 34 of the Act of 1938, with respect to the registration of margarine factories and the premises of wholesale dealers in margarine, apply equally in the case of milk-blended butter factories and premises (see *ante*, p. 200). Similarly, the occupier of a milk-blended butter factory and every wholesale dealer thereof, must keep a register showing the quantity and destination of each consignment of milk-blended butter sent out from his factory or place of business, in accordance with section 35 of the Act of 1938 (see *ante*, p. 201). Where a person is registered in respect of premises used as a milk-blended butter factory or for carrying on the business of a wholesale dealer in milk-blended butter dies, the registration enures for the benefit of his widow, or any other member of his family, until the expiration of 2 months from his death, or until the expiration of such longer period as the registering authority may allow(c).

Labelling and marking of milk-blended butter.—A person who sells, or forwards by any public conveyance, any milk-blended butter must do so under a name approved(d) by the Minister of Agriculture, who must not approve any name which refers to, or is suggestive of, butter or anything connected with the dairy interest(e). The provisions of paragraphs (a), (b) and (c) of subsection (2) of section 33 of the Act of 1938 (see *ante*, p. 201) with respect to the marking of containers and parcels of margarine and its sale by retail, apply in the case of milk-blended butter and to persons dealing therein, with the substitution of an approved name for the word "margarine," but on the outside of the wrapper referred to in paragraph (c) there must, in addition to the approved name, be printed in a proper manner an approved description of the article, setting out the percentage of water (see *supra*) contained therein(f).

CREAM.

Cream means that part of milk rich in fat which has been separated by skimming or otherwise(g). In the Act of 1938(h) any reference to milk includes a reference to cream, and under the Milk and Dairies Order, 1926(i), the expression "milk" includes cream, so that persons selling cream and the

(c) Sect. 97, Food and Drugs Act, 1938; 31 Halsbury's Statutes 312; and see *ante*, p. 15.

(d) *Ibid*, sect. 33(1); 31 Halsbury's Statutes 274; and see *ante*, p. 201.

(e) *Ibid*, sect. 33(7); 31 Halsbury's Statutes 275; and see *ante*, p. 202.

(f) *Ibid*, sect. 33(4); 31 Halsbury's Statutes 275; and see *ante*, p. 202.

(g) *Ibid*, sect. 100; 31 Halsbury's Statutes 313.

(h) *Ibid*, sect. 100(2)(a); 31 Halsbury's Statutes 316.

(i) S.R. and O., 1926, No. 821, as amended by S.R. and O., 1938, No. 217.

premises used for the purpose must be registered by the local authority (see *post*, p. 366) in accordance with the Order of 1926, *supra*(*k*). The appropriate provisions of Part II of the Act of 1938, relating to milk and dairies, including Milk and Dairies Regulations, apply to vendors of cream and the premises used by them (see Chapter 14, *post*, p. 360).

Adulteration of cream.—Cream, as a food, is subject to the provisions of Part I of the Act of 1938, relative to the restriction on the addition of substances, or the abstraction of any constituent thereof, or the sale of cream not of the nature, substance or quality demanded (see Chapter 5, *ante*, p. 111). It is an offence to add a mixture of cream and separated milk to unseparated milk intended for sale as milk(*l*).

Preservatives in cream.—The addition of any kind of preservative to cream or any prohibited colouring matter (see *ante*, p. 186), or any thickening substance, is prohibited(*m*).

Imported cream.—It is an offence to import into England and Wales any cream intended for sale which contains any thickening substance(*n*). The importation of adulterated or impoverished cream, except in containers conspicuously marked with a name or description indicating that the cream has been so treated, may be prohibited by Order in Council(*o*). As to imported foods generally, see Chapter 13, *post*, p. 332.

ARTIFICIAL CREAM.

Artificial cream means an article of food which, though not cream, resembles cream and contains no ingredient which is not derived from milk except water or any substance which may lawfully be contained in an article sold as cream, being some substance not injurious to health which in the case of cream may be required for its production or preparation as an article of commerce in a state fit for carriage or consumption and which has not been added fraudulently to increase bulk, weight or measure or to conceal inferior quality(*p*). It must be emphasised that legally the term *artificial cream* only applies to substances made from milk; synthetic creams containing vegetable oils are not artificial creams within the meaning of the Act of 1938. According to Harvey and Hill(*q*)

(*k*) Art. 6.

(*l*) Sect. 24, Food and Drugs Act, 1938; 31 Halsbury's Statutes 270.

(*m*) Public Health (Preservatives, etc. in Food) Regulations, 1925, 1926 and 1927; S.R. and O., 1925, No. 775; S.R. and O., 1926, No. 1557; and S.R. and O., 1927, No. 577.

(*n*) *Ibid*, Art. 11(3).

(*o*) Sect. 40, Food and Drugs Act, 1938; 31 Halsbury's Statutes 279.

(*p*) *Ibid*, sect. 100; 31 Halsbury's Statutes 313.

(*q*) Harvey and Hill (1937), *loc. cit.* (see note (*z*) on p. 206), p. 127.

the ingredients used in the manufacture of artificial cream are unsalted butter, dried skim-milk powder and water ; if desired, liquid milk may be used in place of the dried-milk powder.

Regulation of sale of artificial cream.—Artificial cream may not be sold, or offered or exposed for sale for human consumption unless labelled as such, in accordance with section 27 of the Act of 1938, *infra*.

Section 27, Food and Drugs Act, 1938.—Regulation of sale of artificial cream.

- (1) No person shall sell, or offer or expose for sale, for human consumption under a description or designation including the word "cream" any substance purporting to be cream or artificial cream, unless—
 - (a) the substance is cream ; or
 - (b) where the substance is artificial cream, the word "cream" is immediately preceded by the word "artificial."
- (2) No person shall use any vessel for conveying artificial cream intended for sale for human consumption, or for containing artificial cream at any time when it is exposed for such sale, unless the words "artificial cream" are printed in large and legible letters of uniform size and conspicuously visible either on the vessel itself, or on a label securely attached thereto.
- (3) A person who contravenes any of the provisions of this section shall be guilty of an offence.

It should be noted that the section applies to cream or artificial cream and not to articles of food like cream buns, which are not sold as, or purport to be, cream, although they may be thought to contain cream(r). At the same time, proceedings may be taken under section 3 of the Act of 1938 (see *ante*, p. 116) in respect of cream buns where they are made with a substitute for pure cream.

Registration of premises.—Section 28 of the Act of 1938, *infra*, requires that artificial cream may not be manufactured, sold or exposed or kept for sale for human consumption unless the premises are registered with the food and drugs authority (see *ante*, p. 19). Where a person who is registered in respect of premises used for the manufacture of artificial cream dies, the registration enures for the benefit of his widow, or any other member of his family, until the expiration of 2 months from his death, or until the expiration of such longer period as the registering authority may allow(s).

Section 28, Food and Drugs Act, 1938.—Premises where artificial cream is manufactured or sold to be registered.

- (1) Artificial cream shall not be manufactured, sold, or exposed or kept for sale for human consumption except on premises registered by the Food and Drugs authority :

(r) See *J. Lyons & Co., Ltd. v. Keating*, [1931] 2 K.B. 535 ; Digest Supp.

(s) Sect. 97, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 312 ; and see *ante*, p. 15.

Provided that registration under this section shall not be required in respect of—

- (a) the manufacture of artificial cream by any person solely for his domestic purposes ; or
 - (b) the manufacture of artificial cream on any premises for use in the preparation on those premises of some other food ; or
 - (c) the sale, exposure or keeping for sale of artificial cream on any premises where it is supplied only in the properly closed and unopened vessels in which it is delivered to those premises.
- (2) A person who uses any unregistered premises in contravention of the foregoing provisions of this section shall be guilty of an offence, and the court may order that any machine found on the premises which is suitable for use in the manufacture of artificial cream shall be forfeited.
- (3) A Food and Drugs authority shall, on the application of the occupier of, or of a person proposing to occupy, any premises, register those premises for the purposes of this section.
- (4) Upon any change in the occupation of premises registered under this section, the incoming occupier shall, if he intends to use them for the purpose for which they are registered, forthwith give notice of the change to the authority, who shall thereupon make any necessary alteration in their register.
- If a person required to give a notice under this subsection fails to do so, he shall be liable to a fine not exceeding five pounds.
- (5) Where any substance having the composition of cream or artificial cream is sold or exposed or kept for sale on premises registered under this section, it shall be presumed to be artificial cream, unless the contrary is proved.

It will be seen that where a person manufactures artificial cream solely for the purpose of using it in the preparation of some other food (*e.g.* cream cakes, etc.) his premises need not be registered. Nor is it necessary to do so where the artificial cream is sold in the same unopened containers in which it is received from some other premises(*t*). Where a justice is satisfied that there is reasonable ground for supposing that premises to which admission has been refused or where an application for admission would defeat the object of entry, are unregistered premises used for the manufacture of artificial cream, he may issue a warrant authorising a search for and the seizure of any machine suitable for use in the manufacture of artificial cream(*u*), but notice of intention to apply for such a warrant must be given to the occupier.

Provisions applicable to artificial cream.—The provisions of Part II of the Act of 1938(*v*) and of any Milk and Dairies Regulations(*w*) relating to cream, other than those relating to

(*t*) See *post*, p. 366, for similar provisions with respect to milk.

(*u*) Sect. 77(2)(b), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 301, and see *ante*, p. 43.

(*v*) 31 Halsbury's Statutes 266.

(*w*) Made under sect. 20, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 266 ; and see *post*, p. 362.

the registration of dairymen and dairies, apply in the case of artificial cream unless the regulations otherwise provide^(x). Consequently, artificial cream may not contain preservative^(y), and the provisions of the Milk and Dairies Order, 1926^(z), apply to premises used for the sale of artificial cream as if such premises were dairies, with the exception of those relating to registration of premises and persons.

As to provisions with respect to cream, see *ante*, p. 207.

Emergency provisions.—The Dried Egg (Control of Use) Order, 1945^(a), prohibits the use of dried egg by way of trade or business in the manufacture of synthetic cream and baker's cream filling, except under licence issued by the Minister of Food. The Order also requires manufacturers who include dried egg in a dry mixture intended for the manufacture of those foods to declare the fact in the prescribed form on the container. Infringements of the Order are offences against the Defence (Sale of Food) Regulations, 1943^(b). The licence issued by the Minister of Food lays down the following method for using dried-egg product in the manufacture of synthetic cream (until further notice the Minister does not propose to issue licences authorising the use of dried egg in the manufacture of baker's cream filling):—

- 1—Any dried-egg product used must first be mixed with water and within an hour brought to a temperature of not less than 170° F., at which it shall then be held for not less than 15 minutes ;
- 2—Not more than 1 hour shall elapse after the heat treatment prescribed by paragraph 1 before the processed reconstituted egg product is mixed with the other ingredients and the whole mix brought to a temperature of not less than 165° F. at which it shall then be held for not less than 30 minutes ;
- 3—After the heat treatment of the whole mix as prescribed by paragraph 2, the synthetic cream shall within half an hour be brought to a temperature of not more than 40° F. at which it shall be held until the synthetic cream is despatched from the manufacturer's premises^(c).

ICE-CREAM.

Ice-cream includes any similar commodity^(d).

Registration of premises.—Premises used for the sale, or the manufacture for the purpose of sale, of ice-cream, or the

(x) *Ibid*, sect. 29 ; 31 Halsbury's Statutes 272.

(y) See chapter 6, *ante*, p. 177.

(z) S.R. and O., 1926, No. 821 ; and see *post*, p. 363.

(a) S.R. and O., 1945, No. 627.

(b) S.R. and O., 1943, No. 1553 ; and see *ante*, p. 144.

(c) Appendix B, Circular FSL/13/45, Ministry of Food, 15th June, 1945.

(d) Sect. 100, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 313.

storage of ice-cream intended for sale, must be registered under section 14 of the Act of 1938 (see *post*, p. 465) by the local authority (see *ante*, p. 18), but this requirement does not apply to premises used primarily as a club, hotel, inn or restaurant, and in relation to premises used as a theatre, cinematograph theatre, music hall or concert hall only applies if the premises are used for the manufacture of ice-cream for the purpose of sale(e). Where a person who is registered in respect of premises used for the manufacture of ice-cream dies, the registration enures for the benefit of his widow, or any other member of his family, until the expiration of 2 months from his death, or until the expiration of such longer period as the registering authority may allow (f).

Composition.—There is no standard composition prescribed for ice-cream. The Ice-Cream Association of Great Britain and Ireland has recommended as a definition of "ice-cream" "a frozen product containing not less than 8 per cent. of milk fat and not less than 10 per cent. of milk solids-not-fat." On another occasion the same Association recommended that "standard" ice-cream should contain not less than 8 per cent. of butter fat and not less than 18 per cent. of total solids(g). In America the State Department of Agriculture defines ice-cream as follows :—

" 'Ice-cream' is a frozen product made from cream and sugar with or without a natural flavouring and containing not less than 14 per cent. of milk fat.

" 'Fruit ice-cream' is a frozen product made from cream, sugar, fresh fruit and sound, non-rancid nuts and contains not less than 12 per cent. of milk fat"(h).

Notices to be displayed by persons selling ice-cream.—Section 16 of the Act of 1938 (see *post*, p. 320) requires every dealer in ice-cream who in a street or other place of public resort sells, or offers or exposes for sale, ice-cream from a stall, or from a cart, barrow or other vehicle, or from a basket, pail, tray or other container used without a stall or vehicle, to have his name and address legibly and conspicuously displayed on the stall, vehicle or container.

Provisions as to ice-cream likely to cause milk-borne disease—see section 37 of the Act of 1938, *post*, p. 401.

Emergency provisions.—The Dried Egg (Control of Use) Order, 1945(i), prohibits the use of dried egg by way of trade or business in the manufacture of ice-cream, except under

(e) See Food and Drugs Act, 1938, sect. 14(7) ; 31 Halsbury's Statutes 264.

(f) *Ibid*, sect. 97 ; 31 Halsbury's Statutes 312 ; and see *ante*, p. 15.

(g) Harvey and Hill (1937), *loc. cit.*, p. 3.

(h) *Ibid*, p. 4.

(i) S.R. and O., 1945, No. 627.

licence issued by the Minister of Food. The Order also requires manufacturers of ice-cream who include dried egg in a dry mixture intended for the manufacture of ice-cream to declare the fact in the prescribed form on the container. Infringements of the Order are offences against the Defence (Sale of Food) Regulations, 1943(*k*). The licence issued by the Minister lays down the following method for using dried-egg product in the manufacture of ice-cream :—

1—After the product shall have been mixed with liquid or otherwise so mixed or processed as to be no longer in dry powder form the following provisions shall apply :—

- (a) the product shall not be kept for more than one hour at any temperature which exceeds 45° F. but does not exceed 150° F. before being subjected to heat treatment in accordance with the next following sub-paragraph (b) ;
- (b) the product shall be subjected to heat treatment, as follows : it shall be subjected to a temperature of not less than 150° F. for 30 minutes, or alternatively to not less than 160° F. for 10 minutes.

2—After the product has been subjected to heat treatment as provided by sub-paragraph (b) of paragraph 1 hereof it shall be reduced to a temperature of not more than 45° F. within 1½ hours and shall be kept at such a temperature until it is frozen in the course of manufacture of the ice-cream(*l*).

CONDENSED MILK.

The sale of condensed milk is governed by the Public Health (Condensed Milk) Regulations, 1923, 1927 and 1943(*m*) which were kept in force by section 101 of the Act of 1938(*n*). Any contravention of the Regulations constitutes an offence under the Act (see *ante*, p. 12).

“ **Condensed milk** ” means milk or skimmed milk which has been concentrated by the removal of part of its water, whether with or without the addition of sugar, and includes the article commonly known as “ evaporated milk,” but does not include the article commonly known as “ dried milk ” or “ milk powder ”(*o*).

Composition of condensed milk.—It is an offence to sell or expose for sale or deposit in any place for the purposes of sale, or despatch or deliver to any purchaser, broker or agent any condensed milk intended for human consumption unless

(*k*) S.R. and O., 1943, No. 1553 ; and see *ante*, p. 144.

(*l*) Appendix A, Circular FSL/13/45, Ministry of Food, 15th June, 1945.

(*m*) S.R. and O., 1923, No. 509 ; S.R. and O., 1927, No. 1092 ; and S.R. and O., 1943, No. 896.

(*n*) 31 Halsbury's Statutes 316 ; and see *ante*, p. 160.

(*o*) Public Health (Condensed Milk) Regulations, 1923, 1927 and 1943 ; S.R. and O., 1923, No. 509 ; S.R. and O., 1927, No. 1092 ; and S.R. and O., 1943, No. 896 ; Art. 2.

it contains not less than the appropriate percentages of milk fat and milk solids as under(*p*)—

Public Health (Condensed Milk) Regulations, 1923 to 1943.
Second Schedule.

All condensed milk shall contain not less than the appropriate percentages of milk fat and milk solids as specified in the following table :—

Description of condensed milk.	Percentage of milk fat.	Percentage of all milk solids including fat.
1. Full cream, unsweetened	9·0	31·0
2. Full cream, sweetened ..	9·0	31·0
3. Skimmed, unsweetened ..	—	20·0
4. Skimmed, sweetened ..	—	26·0(<i>q</i>)

The provisions of Article 4 do not apply in any case where the condensed milk is intended to be exported or is contained in a tin or other receptacle whose gross weight exceeds 5 pounds. During the war emergency the minimum content of milk fat in unsweetened full-cream condensed milk was reduced to 7·8 per cent. by weight and the minimum percentage of all milk solids to 25·5 per cent.(*r*). It is an offence under the Act of 1938 (see *ante*, p. 12) to add any condensed milk or liquid reconstituted therefrom, to milk intended for sale for human consumption, or to sell, or offer or expose for sale, or have in possession for the purpose of sale for human consumption any milk to which any such addition has been made(*s*).

Labelling of condensed milk.—No person may sell or expose for sale or deposit in any place for the purpose of sale, or despatch or deliver to any purchaser, broker or agent any condensed milk intended for human consumption unless it is contained in a tin or other receptacle which is labelled as follows(*t*) :—

Public Health (Condensed Milk) Regulations, 1923 to 1943.
First Schedule.

Rules with respect to the Labelling of Condensed Milk.

1—Every tin or other receptacle containing condensed milk shall bear a label upon which is printed such one of the following

(*p*) Public Health (Condensed Milk) Regulations, 1923, 1927 and 1943 : S.R. and O., 1923, No. 509 ; S.R. and O., 1927, No. 1092 ; and S.R. and O., 1943, No. 896 ; Art. 4.

(*q*) *Ibid*, Sched. 2.—*Note* : Percentages must be calculated by weight, see Art. 2.

(*r*) Condensed Milk (Milk Content) Order, 1940, S.R. & O., 1940, No. 1896

(*s*) Sect. 24, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 270

(*t*) Public Health (Condensed Milk) Regulations, 1923–1943 ; Art. 4

declarations as may be applicable or such other declarations substantially to the like effect as may be allowed by the Minister :—

- (i) In the case of full-cream milk (unsweetened) :—

CONDENSED FULL-CREAM MILK, UNSWEETENED.
THIS TIN CONTAINS THE EQUIVALENT OF
(a) PINTS OF MILK.

- (ii) In the case of full-cream milk (sweetened) :—

CONDENSED FULL-CREAM MILK, SWEETENED
THIS TIN CONTAINS THE EQUIVALENT OF
(a) PINTS OF MILK, WITH SUGAR ADDED.

- (iii) In the case of skimmed milk (unsweetened) :—

CONDENSED MACHINE-SKIMMED MILK [or CONDENSED SKIMMED MILK], UNSWEETENED.

UNFIT FOR BABIES (u)

THIS TIN CONTAINS THE EQUIVALENT OF
(a) PINTS OF SKIMMED MILK.

- (iv) In the case of skimmed milk (sweetened) :—

CONDENSED MACHINE-SKIMMED MILK [or CONDENSED SKIMMED MILK], SWEETENED.

UNFIT FOR BABIES (u)

THIS TIN CONTAINS THE EQUIVALENT OF
(a) PINTS OF SKIMMED MILK, WITH SUGAR ADDED.

2—The declaration shall in each case be completed by inserting at (a) the appropriate number in words and figures, *e.g.* "one and a half ($1\frac{1}{2}$)," any fraction being expressed as eighths, quarters or a half.

For the purpose of these Rules milk which contains not less than 12·4 per cent. of milk solids (including not less than 3·6 per cent. of milk fat) and skimmed milk means milk which contains not less than 9 per cent. of milk solids other than milk fat.

(u) These words may be used instead of the words "unfit for babies"—see S.R. and O., 1943, No. 896.

- 3—(a) The prescribed declaration shall be printed in dark block type upon a light-coloured ground.
- (b) There shall be a surrounding line enclosing the declaration and in the cases in which the words "unfit for babies" or "not to be used for babies" are required to be used there shall be another such line enclosing those words.
- (c) The distance between any part of the words "unfit for babies" or "not to be used for babies" and the surrounding line enclosing those words shall not be less than one-sixteenth of an inch.
- (d) No matter other than that hereinbefore prescribed shall be printed within either surrounding line.
- (e) The type used for the declaration shall not in any part be less than one-eighth of an inch in height (or if the gross weight of the tin or other receptacle does not exceed twelve ounces, one-sixteenth of an inch in height) and the type used for the words "unfit for babies" or "not to be used for babies" shall not be less than twice the height of any other part of the declaration.
- 4—The label shall in addition bear the name and address of the manufacturer of the condensed milk or of the dealer or merchant in the United Kingdom for whom it is manufactured.
- 5—The label shall be securely affixed to the tin or other receptacle so as to be clearly visible. If there is attached to the tin or other receptacle a label bearing the name, trade mark, or design representing the brand of the condensed milk, the prescribed declaration shall be printed as part of such label.
- 6—There shall not be placed on any tin or other receptacle containing condensed milk—
- (a) any comment on, explanation of, or reference to either the statement of equivalence contained in the prescribed declaration or the words "machine-skimmed," "skimmed," or "not to be used for babies"; or
- (b) any instructions as to dilution, unless either—
- (i) the fluid produced in accordance with such instructions would contain not less milk fat and not less milk solids than milk or skimmed milk as defined in Rule 2 of this Schedule as the case may require; or
- (ii) such instructions clearly specify that the fluid so produced is not of equivalent composition to milk or skimmed milk as the case may be.
- 7—Wherever the word "milk" appears on the label of a tin or other receptacle of condensed skimmed milk as the description or part of the description of the contents, it shall be immediately preceded or followed by the words "machine-skimmed" or "skimmed" as the case may require^(v).

In the case of any variety of condensed milk the order of the words contained in the descriptive part of the declaration may be varied so that the words "sweetened" or "unsweetened" as the case may be, is placed after the word "condensed," instead of being placed after the word "milk"^(w). The provisions of Article 4 with respect to labelling do not apply in

^(v) Sched. 1, Public Health (Condensed Milk) Regulations, 1923-1943.

^(w) Circular 827, Ministry of Health, 19th November, 1927.

any case where the condensed milk is intended to be exported or is contained in a tin or other receptacle whose gross weight exceeds 5 pounds, nor in any public refreshment room, restaurant, shop or other public premises where condensed milk is delivered to a purchaser or other person for consumption on the premises. Where a tin or other receptacle containing condensed skimmed milk is required by Article 4, *supra*, to be labelled, it must also bear the words "unfit for babies" or "not to be used for babies," such words being contained within a surrounding line. The type for these words must be not less than a quarter of an inch in height and the printing must otherwise conform with the rules prescribed for the printing of the same matter on the label affixed to the tin or receptacle(x).

During the war emergency the provisions of Article 4 of the Regulations, *supra*, do not apply to the sale, or the despatch or delivery to any purchaser, broker or agent, of any full-cream unsweetened condensed milk intended for human consumption which—

- (a) is sold, despatched or delivered under and in accordance with the terms of a licence granted by or on behalf of the Minister of Food ; or
- (b) being imported milk, contains not less than 7·8 per cent. by weight of milk fat and not less than 25·5 per cent. by weight of all milk solids including fat(y).

Powers and duties of local authorities and their officers.—

The food and drugs authority (see *ante*, p. 19) must enforce the provisions of the Regulations relating to the sale, etc., of condensed milk(z). The medical officer of health, and any person authorised by him or by the food and drugs authority in writing, may procure any sample of condensed milk and submit it to the public analyst for analysis. Unless the sample is obtained for the purpose of testing the quantity of milk or skimmed milk of which the contents of a tin or other receptacle are equivalent, the provisions of section 70 of the Act of 1938(a), with respect to the division of the sample into three parts and the separation, marking and disposal of such parts, apply(b). Any authorised officer of the food and drugs authority has power of entry at all reasonable times on to premises where condensed milk is prepared, packed, labelled or stored(c). Where it is found that condensed milk intended for sale does

(x) Art. 4(a), Public Health (Condensed Milk) Regulations, 1923–1943.

(y) Paragraph 8, Defence (General) Regulations, No. 60CAA ; S.R. and O., 1944, No. 1311.

(z) Art. 3, Public Health (Condensed Milk) Regulations, 1923–1943.

(a) 31 Halsbury's Statutes 296.

(b) Art. 5, Public Health (Condensed Milk) Regulations, 1923–1943.

(c) *Ibid*, Art. 6.

not comply with the Regulations, the food and drugs authority must ascertain where it is manufactured and labelled. If the place of manufacture or labelling is in England and Wales the food and drugs authority concerned must be notified; in the case of condensed milk from other countries, the facts must be reported to the Ministry of Health(*d*).

Imported condensed milk.—Part III of the Regulations deals with imported condensed milk, details of which will be found in Chapter 13 (see *post*, p. 341).

DRIED MILK.

The sale of dried milk is governed by the Public Health (Dried Milk) Regulations, 1923, 1927 and 1943(*e*), which were kept in force by section 101 of the Act of 1938(*f*). Any contravention of the Regulations constitutes an offence under the Act (see *ante*, p. 12).

“Dried milk” means milk, partly skimmed milk or skimmed milk, which has been concentrated to the form of powder or solid by the removal of water(*g*).

Composition of dried milk.—It is an offence to sell or expose for sale or deposit in any place for the purposes of sale, or despatch or deliver to any purchaser, broker or agent any dried milk intended for human consumption unless it contains the following percentages of milk fat, namely:—

Description of dried milk.			Percentage of milk fat(<i>h</i>).
Full cream	..	..	26
Three-quarter cream	..	..	20
Half cream	..	..	14
Quarter cream	..	..	8(<i>i</i>)

The provisions of Article 4, *supra*, do not apply in any case where the dried milk is contained in a tin or other receptacle whose gross weight exceeds 10 pounds. It is an offence under the Act of 1938 (see *ante*, p. 12) to add any dried milk or liquid reconstituted therefrom, to milk intended for sale for human consumption, or to sell, or offer or expose for sale, or have in possession for the purpose of sale, for human consumption, any milk to which any such addition has been made(*k*).

(*d*) See Public Health (Condensed Milk) Regulations, 1923–1943; Art. 7.

(*e*) Public Health (Dried Milk) Regulations, 1923, 1927 and 1943; S.R. and O., 1923, No. 1323; S.R. and O., 1927, No. 1093; S.R. and O., 1943, No. 896.

(*f*) 31 Halsbury's Statutes 316; and see *ante*, p. 160.

(*g*) Art. 2, Public Health (Dried Milk) Regulations, 1923–1943.

(*h*) Calculated by weight; *ibid*.

(*i*) *Ibid*, Art. 4.

(*k*) Sect. 24, Food and Drugs Act, 1938; 31 Halsbury's Statutes 270.

Labelling of dried milk.—No person may sell or expose for sale or deposit in any place for the purposes of sale, or despatch or deliver to any purchaser, broker or agent any dried milk intended for human consumption unless it is contained in a tin or other receptacle which is labelled in accordance with the following rules⁽¹⁾ :—

Public Health (Dried Milk) Regulations, 1923 to 1943.

The Schedule.

Rules with respect to the Labelling of Dried Milk.

1—(1) Every tin or other receptacle containing dried milk (other than dried milk to which sugar or some other substance has been added) shall bear a label upon which is printed such one of the following declarations as may be applicable or such other declaration substantially to the like effect as may be allowed by the Minister :—

(i) In the case of full-cream milk, that is to say, dried milk containing not less than 26 per cent. of milk fat :—

DRIED FULL-CREAM MILK.

**THIS TIN CONTAINS THE EQUIVALENT OF
(a) PINTS OF MILK.**

(ii) In the case of partly skimmed milk, that is to say, dried milk containing not less than 8 per cent. but less than 26 per cent. of milk fat :—

**DRIED PARTLY SKIMMED MILK
((b) CREAM).**

**SHOULD NOT BE USED FOR BABIES EXCEPT
UNDER MEDICAL ADVICE.**

**THIS TIN CONTAINS THE EQUIVALENT OF
(a) PINTS OF (b) CREAM MILK.**

(iii) In the case of skimmed milk, that is to say, dried milk containing less than 8 per cent. of milk fat :—

**DRIED MACHINE-SKIMMED MILK.
[OR DRIED SKIMMED MILK.]**

**UNFIT FOR BABIES
OR
NOT TO BE USED FOR BABIES**

**THIS TIN CONTAINS THE EQUIVALENT OF
(a) PINTS OF SKIMMED MILK.**

(1) Art. 4, Public Health (Dried Milk) Regulations, 1923-1943.

- (2) The label on any tin or other receptacle containing dried milk to which sugar or some other substance has been added shall be in the appropriate form prescribed in subdivision (1) hereof, with the following modifications:—
- (i) There shall be added to the heading the word "sweetened" if the only substance added to the milk is sugar; the word "modified" if the only substance added is a constituent of milk; and the word "compounded" in every other case; and
 - (ii) The words "with (c) added" shall be added to the last sentence in each case, words being inserted at (c) to specify the substance or substances added.
- (3) The declaration shall be completed as follows:—
- (i) There shall be inserted at (a) the appropriate number in words and figures, *e.g.* "one-and-a-half ($1\frac{1}{2}$)," any fraction being expressed as eighths, quarters or a half.
 - (ii) There shall be inserted at (b) the word "three-quarter" if the percentage of milk fat is not less than 20; "half" if such percentage is less than 20 but not less than 14; and "quarter" if such percentage is less than 14 but not less than 8.
- (4) For the purposes of this Rule the terms "milk," "three-quarter cream milk," "half-cream milk" and "quarter-cream milk" mean milk containing not less than the following percentages of milk fat and milk solids, that is to say—

	<i>Milk fat.</i>	<i>Milk solids (including fat).</i>
Milk.. .. .	3·6	12·4
Three-quarter cream milk ..	2·7	11·6
Half-cream milk	1·8	10·8
Quarter-cream milk	0·9	9·9

and "skimmed milk" means milk which contains not less than 9 per cent. of milk solids other than milk fat.

- 2—(a) The prescribed declaration shall be printed in dark block type upon a light-coloured ground.
- (b) There shall be a surrounding line enclosing the declaration and in the case in which the words "unfit (or "not to be used") for babies" are required to be used there shall be another such line enclosing those words.
- (c) The distance between any part of the words "unfit (or "not to be used") for babies" and the surrounding line enclosing those words shall be not less than one-sixteenth of an inch.
- (d) No matter other than that hereinbefore prescribed shall be printed within either surrounding line.
- (e) The type used for the declaration shall not in any part be less than one-eighth of an inch in height (or if the gross weight of the tin or other receptacle does not exceed twelve ounces, one-sixteenth of an inch in height) and the type used for the words "unfit (or "not to be used") for babies" shall not be less than twice the height of any other part of the declaration.

- 3—The label shall in addition bear the name and address of the manufacturer of the dried milk or of the dealer or merchant in the United Kingdom for whom it is manufactured.
- 4—The label shall be securely affixed to the tin or other receptacle so as to be clearly visible. If there is attached to the tin or other receptacle a label bearing the name, trade mark, or design representing the brand of the dried milk, the prescribed declaration shall be printed as part of such label.
- 5—There shall not be placed on any tin or other receptacle containing dried milk—
 - (a) any comment on, explanation of, or reference to either the statement of equivalence contained in the prescribed declaration or the words “partly skimmed,” “machine-skimmed,” “skimmed,” or “unfit (or “not to be used”) for babies”; or
 - (b) any instructions as to dilution, unless either—
 - (i) the fluid in accordance with such instructions would contain not less milk fat and not less milk solids than milk, partly skimmed milk or skimmed milk as defined in Rule 1 of this Schedule, as the case may require; or
 - (ii) such instructions clearly specify that the fluid so produced is not of equivalent composition to milk, partly skimmed milk, or skimmed milk, as the case may be.
- 6—Wherever the word “milk” appears on the label or a tin or other receptacle of dried partly skimmed or skimmed milk as the description or part of the description of the contents, it shall be immediately preceded or followed by the words “partly skimmed,” “machine-skimmed” or “skimmed,” as the case may require^(m).

In the case of any variety of dried milk the word “package,” “packet” or “receptacle” may be substituted for the word “tin” in the statement of equivalence. In the case of the proprietary preparation known as “Virol and Milk,” the words “Dried Full-Cream Milk and Virol” may be substituted for the words “Dried Full-Cream Milk Compounded”⁽ⁿ⁾. Where dried milk is sold by weight and is not placed in the tin or other receptacle in which it is delivered to the purchaser until immediately before such delivery, the provisions of Rules 1 to 4 of the Schedule, *supra*, are deemed to be satisfied if the matters therein required to appear on a label affixed to the tin or other receptacle are printed on a separate label or notice delivered to the purchaser, and the last sentence of the declaration required by Rule 1 of the Schedule may be varied so as to relate to one pound or to any other specified weight of the article sold instead of the contents of the actual tin or other receptacle^(o). Where a tin or other receptacle containing dried

(m) See Public Health (Dried Milk) Regulations, 1923–1943, Schedule.

(n) Circular 827, Ministry of Health, 19th November, 1927.

(o) Art. 4, Public Health (Dried Milk) Regulations, 1923–1943.

skimmed milk is required by Article 4, *supra*, to be labelled, it must also bear the words "unfit for babies" or "not to be used for babies," such words being contained within a surrounding line. The type used for these words must be not less than a quarter of an inch in height and the printing must otherwise conform with the rules prescribed for the printing of the same matter on the label affixed to the tin or other receptacle(*p*).

Powers and duties of local authorities and their officers.—

The food and drugs authority (see *ante*, p. 19) must enforce the provisions of the Regulations relating to the sale, etc., of dried milk(*q*). The medical officer of health, and any person authorised by him or by the food and drugs authority in writing, may procure any sample of dried milk and submit it to the public analyst for analysis. Unless the sample is procured for the purpose of testing the quantity of milk or skimmed milk of which the contents of a tin or other receptacle are equivalent, the provisions of section 70 of the Act of 1938(*r*), with respect to the division of the sample into three parts and the separation, marking and disposal of such parts, apply. Where the sample is procured for the purpose of testing the quantity of milk, partly skimmed milk or skimmed milk of which the contents of the tin or receptacle are the equivalent, the sampling officer must, as soon as may be after the net weight of the contents has been ascertained, deliver a part of the sample to the seller or his agent(s). Any authorised officer of the food and drugs authority has power of entry at all reasonable times on to premises where dried milk is prepared, packed, labelled or stored(*t*). Where it is found that dried milk intended for sale does not comply with the regulations, the food and drugs authority must ascertain where it is manufactured and labelled. If the place of manufacture or labelling is in England and Wales the food and drugs authority concerned must be notified; in the case of dried milk from other countries the facts must be reported to the Ministry of Health(*u*).

SEPARATED AND SKIMMED MILK.

"Separated," in relation to milk, includes skimmed(*v*). In the Act of 1938(*w*) any reference to milk includes a reference to separated milk, so that if a person sells separated milk

(*p*) See Public Health (Dried Milk) Regulations, 1923-1943; Art. 4a.

(*q*) *Ibid*, Art. 3.

(*r*) 31 Halsbury's Statutes 296.

(*s*) Art. 5, Public Health (Dried Milk) Regulations, 1923-1943.

(*t*) *Ibid*, Art. 6.

(*u*) *Ibid*, Art. 7.

(*v*) Sect. 100, Food and Drugs Act, 1938; 31 Halsbury's Statutes 313.

(*w*) *Ibid*, sect. 100(2)(a); 31 Halsbury's Statutes 316.

only he and the premises used by him for the purpose must be registered by the local authority (see *ante*, p. 18), in accordance with the provisions of the Milk and Dairies Order, 1926(x). The appropriate provisions of Part II of the Act of 1938, relative to milk and dairies, including Milk and Dairies Regulations, apply to vendors of separated milk and the premises used by them (see Chapter 14, *post*, p. 360).

Marking of containers.—Churns, vessels or other receptacles used for the conveyance of skimmed or separated milk or for containing such milk at any time when it is exposed for sale, must be marked with the words “skimmed milk” or “separated milk” as the case may require, in large and legible type(y).

Composition of separated or skimmed milk.—Where a sample of separated or skimmed milk contains less than 8·7 per cent. of milk solids other than milk fat, it is presumed, until the contrary is proved, that the milk is not genuine, by reason of the abstraction therefrom of milk solids other than milk fat, or the addition thereto of water(z).

Separated or skimmed milk not to be added to milk.—It is an offence under the Act of 1938 (see *ante*, p. 12) to add any separated milk, or mixture of cream and separated milk, to unseparated milk intended for sale, or to sell, or offer or expose for sale, or have in possession for the purpose of sale for human consumption any milk to which any such addition has been made(a).

BREAD AND FLOUR.

The Minister of Health is empowered by section 30 of the Act of 1938, *infra*, to make regulations as to the composition of bread and the addition of substances to flour.

Section 30, Food and Drugs Act, 1938.—Regulations as to the composition of bread and the addition of substances to flour.

(1) The Minister may make regulations (in this Act referred to as “Bread and Flour Regulations”) for all or any of the purposes mentioned in any of the following paragraphs, that is to say—

- (a) prescribing the kinds of flour other than wheat flour and the other substances which may be used in the making of bread for sale;
- (b) prescribing the descriptions under which bread made of flour other than wheat flour may be sold, and the manner in which any such bread is to be marked;

(x) S.R. and O., 1926, No. 821; and see *post*, p. 363.

(y) Milk and Dairies Order, 1926, art. 30; S.R. and O., 1926, No. 821.

(z) Sale of Milk Regulations, 1939, art. 3; S.R. and O., 1939, No. 1417.

(a) Sect. 24, Food and Drugs Act, 1938; 31 Halsbury's Statutes 270.

- (c) prohibiting or restricting the addition of any substance, or the application of any treatment, to flour intended for sale or for use in the making of bread for sale ;
 - (d) prescribing the descriptions under which, and conditions subject to which, flour may be sold ; and
 - (e) for preventing danger to health from the importation, preparation, transport, storage, exposure for sale and delivery of bread and flour.
- (2) Regulations shall not be made for any of the purposes mentioned in paragraph (a) or paragraph (c) of the preceding subsection, unless they are expressed to be in the opinion of the Minister necessary or expedient for preventing danger to health or loss of nutritional value, or otherwise for protecting purchasers.

The provisions of section 92 of the Act of 1938 (see *ante*, p. 4) with respect to certain regulations apply in the case of Bread and Flour Regulations. So far no regulations have been made by the Minister under this section, although various emergency regulations(*b*) have been made by the Minister of Food, affecting the composition of bread and flour. These are enforced by food control committees and not by food and drugs authorities.

If any flour or other substance which under Bread and Flour Regulations may not be used in the making of bread for sale is found in a bakehouse, or any substance which under those regulations may not be added to flour is found in a flour mill, the occupier of the premises is guilty of an offence (see *ante*, p. 12), unless he proves that the substance in question was not intended to be used in the making of bread for sale, or, as the case may be, was not intended to be added to any flour intended for sale(*c*).

(*b*) Bread (Control and Maximum Prices) Order, 1943 ; S.R. and O., 1943, No. 42, as amended by S.R. and O., 1943, Nos. 88 and 226. Flour Order, 1943 ; S.R. and O., 1943, No. 11.

(*c*) Sect. 31, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 273.

PART III.

UNSOUND FOOD.

CHAPTER 8.

SEIZURE AND CONDEMNATION OF UNSOUND FOOD.

INTRODUCTION.

The law governing the seizure and condemnation of unsound food is found mainly in Part I of the Food and Drugs Act, 1938(a), and the authorities responsible for its enforcement are the councils of county boroughs, boroughs, urban and rural districts(b). The sanitary inspector is almost invariably the officer charged with the duty of inspecting food during manufacture, preparation and storage, and when deposited or exposed for sale for human consumption. For that purpose he usually undergoes a special course of training and obtains an additional qualification as an inspector of meat and other foods (see *ante*, p. 34). In a few towns the work of food inspection is carried out by veterinary surgeons with special training as meat and food inspectors (see *ante*, p. 33).

The special procedure with respect to the seizure and condemnation of meat will be found in Chapter 9, *post*, p. 237 ; shellfish in Chapter 10, *post*, p. 299 ; preserved foods in Chapter 19, *post*, p. 465 ; and imported foods in Chapter 13, *post*, p. 332.

It must be emphasised that *unsound food*, as distinct from *adulterated food* (see Part II, *ante*, p. 111), is definitely unfit for human consumption by reason of it being unsound, unwholesome, diseased or otherwise unfit for the food of man. In short, unsound food is liable to cause illness, or even death, in persons consuming it. To this extent, the sale, etc., of unsound food is a much more serious matter than is the case with adulterated food, and this is reflected in the penalties imposed for the respective offences (see *ante*, p. 12). Although in a few cases (*e.g.* the addition of an injurious chemical ingredient) adulterated food may also be unsound or unfit for human consumption, the two types of offence are usually quite different. This distinction is clearly emphasised in the Act of 1938, as a result of which the provisions relating to adulteration are enforced by food and drugs authorities (see *ante*, p. 19), and those relating to unsound food by local authorities (see *ante*, p. 18).

(a) 31 Halsbury's Statutes 254.

(b) Sect. 64, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 292 ; and see *ante*, p. 18.

It should also be remembered that local authorities and their officers, in connection with the administration of the law relating to unsound food, are not concerned with questions of *quality or marketability*. The only issue to be decided is whether the food in question is fit for human consumption. Complaints are frequently made by purchasers (either private persons or retail traders) respecting the *quality* of food, but sanitary inspectors should be particularly careful to avoid becoming involved in questions of this sort, confining themselves strictly to the fitness of the food for human consumption.

Articles commonly used for human consumption are, if sold or offered, exposed or kept for sale, presumed, until the contrary is proved, to have been sold, or, as the case may be, to have been or to be intended for sale, for human consumption. Any article commonly used for human consumption which is found on premises used for the preparation, storage or sale of that article and any article commonly used in the manufacture of products for human consumption which is found on premises used for the preparation, storage or sale of those products, is presumed, until the contrary is proved, to be intended for sale, or for manufacturing products for sale, for human consumption(c). It will be observed that the onus of proof rests on the defendant as to whether food is intended for human consumption. In a case(d) the court accepted the evidence of the defendant and his servant and did not consider independent testimony essential. It was also held(e) that the word "prove" does not mean "prove beyond reasonable doubt" but merely "prove"(f). Any reference to food of any kind sold, or offered, exposed, intended or in preparation, for sale for human consumption, includes a reference to that food sold, or offered, exposed, intended or in preparation for sale for the manufacture of products for human consumption(g).

OFFENCES IN CONNECTION WITH UNSOUND FOOD.

Any person who knowingly sells or permits to be sold, food which is unfit for human consumption, is guilty of an offence at common law(h), but he is not guilty of an offence if he does not know or intend that the food should be used for human consumption(i). This is a particularly important point in

(c) See Food and Drugs Act, 1938, sect. 81(4); 31 Halsbury's Statutes 304.

(d) *Lamont v. Rodger*, [1911] S.C. (J.) 24; 25 Digest 107, c.

(e) *Cant v. Harley & Sons, Ltd.*, [1938] 2 All E.R. 768; Digest Supp.

(f) See *ante*, p. 122, for cases dealing with milk.

(g) Sect. 100(2)(b), Food and Drugs Act, 1938; 31 Halsbury's Statutes 316.

(h) *R. v. Dixon* (1814), 3 M. & S. 11; 14 Digest, 34, 48.

R. v. Stevenson (1862), 3 F. & F. 106; 14 Digest 36, 60.

(i) *R. v. Crawley* (1862), 3 F. & F. 109; 14 Digest 36, 62.

Burnley v. Bollett (1847), 16 M. & W. 644; 39 Digest 446, 745.

relation to pets shops where food (*e.g.* meat) is sold for feeding animals. A person who knowingly sells as fit for human consumption food which is unsound may be guilty of obtaining money by false pretences(*k*).

A person who is charged with an offence in connection with unsound food is entitled to have some other person, whom he alleges is responsible for the offence, brought before the court. If the original defendant proves that the offence was due to the act or default of that other person, such person may be convicted, and, if the original defendant further proves that he has used all due diligence to prevent an offence, he must be acquitted(*l*). This procedure enables a whole chain of distributors and vendors, together with the original manufacturer or producer of an article of food, to be brought before the court as defendants on the same occasion(*m*).

In certain cases of unsound food, it may be possible for a defendant to rely on the warranty defence(*n*), but such cases are likely to be uncommon in the case of unsound food as compared with adulterated food.

EXAMINATION OF FOOD AND SEIZURE OF UNSOUND FOOD.

An authorised officer(*o*) of a local authority is empowered to examine any food intended for human consumption and to seize it if it appears to him to be unfit for the food of man, in accordance with section 10 of the Act of 1938, *infra*. As to the inspection of meat, see Chapter 9, *post*, p. 237.

Section 10, Food and Drugs Act, 1938.—Examination of food and seizure of unsound food.

- (1) An authorised officer of a local authority may at all reasonable times examine any food intended for human consumption which has been sold, or is offered or exposed for sale, or is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale, and, if it appears to him to be unfit for human consumption, may seize it and remove it in order to have it dealt with by a justice of the peace.
- (2) An officer who seizes any food under the preceding subsection shall inform the person in whose possession it was found of his intention to have it dealt with by a justice of the peace, and any person who under the last preceding section might be liable to a prosecution in respect of the food shall, if he attends

(*k*) *R. v. Foster* (1877), 2 Q.B.D. 301 ; 15 Digest 996, 11,146.

(*l*) S. 83, F. & D. A., 1938 ; 31 Halsbury's Statutes 305 ; and *ante*, p. 13.

(*m*) *British Fermentation Products, Ltd. v. British Italian Trading Co., Ltd.*, [1942] 2 K.B. 145 ; [1942] 2 All E.R. 256.

(*n*) Sect. 84, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 306.

(*o*) Sanitary Inspector, Medical Officer of Health, Veterinary Surgeon or other authorised officer—see sect. 100, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 313 ; and see *ante*, p. 33.

before the justice upon the application for its condemnation, be entitled to be heard and to call witnesses.

- (3) If it appears to a justice of the peace that any food brought before him, whether seized under the provisions of this section or not, is unfit for human consumption, he shall condemn it and order it to be destroyed, or to be so disposed of as to prevent it from being used for human consumption.
- (4) If a justice of the peace refuses to condemn any food seized under this Part of this Act by an authorised officer of a local authority, the authority shall compensate the owner of the food for any depreciation in its value resulting from its seizure and removal.

It should be noted that the sanitary inspector and medical officer of health are authorised officers for the purpose of this section by virtue of their office, and they do not require special authorisation. A member of the Royal College of Veterinary Surgeons employed by a local authority for the purpose of the inspection of food is deemed to be an authorised officer for the purpose of the examination and seizure of *meat*, and so far as meat is concerned such officer does not require to be expressly authorised by the local authority. It should also be observed, however, that a veterinary surgeon must be specially authorised by the local authority in respect of the examination and seizure of foods other than meat. A local authority are entitled to authorise any other officer to act for the purpose of the enforcement of the provisions of section 10, *supra*, except in relation to the examination and seizure of meat, which can only be carried out by a sanitary inspector, medical officer or veterinary surgeon(*p*).

The examination of food may be carried out at all reasonable times, but it was held that a Sunday afternoon, when the shop was closed, was not a reasonable time(*q*). As to powers of entry and penalties for obstruction, see sections 77 and 78 of the Act of 1938 (*ante*, pp. 43 and 45). Under these sections an authorised officer is empowered to enter premises at all reasonable times on production of a duly authenticated document showing his authority. If a justice is satisfied that entry to premises has been refused, he may issue a search warrant enabling the officer to enter the premises, if need be by force. Except in cases where the premises are unoccupied, or the occupier is temporarily absent, or the matter is one of urgency, a warrant may not be issued unless the justice is satisfied that notice of intention to apply for it has been given to the occupier.

The provisions contained in subsection (2) of section 10, *supra*, appeared for the first time in the general law, although similar powers were included in a number of private Acts. Prior to 1938 there was no necessity to notify the owner of

(*p*) See note (*o*), p. 227, *ante*.

(*q*) *Small v. Bickley* (1875), 32 L.T. 726; 25 Digest 108, 322.

the food or the person in whose possession it was found of the intention to apply to a justice for a condemnation order(r), but in all areas it is now necessary to inform the *person in whose possession* the food was found of the intention to take it before a justice with a view to its being condemned. It should be noted that that person is entitled to appear before the justice, with witnesses, and to be heard. Although the right of appearance before the justice is confined to the person in whose possession the unsound food was found, it is always wise to notify the actual owner of the food in cases where it was not in his possession at the time of seizure.

It should be observed that the authorised officer must seize the food. In practice a great deal of unsound food is dealt with by sanitary officers without the procedure laid down in section 10, *supra*, being followed. In the majority of instances the owner of the food is willing to surrender it to the inspecting officer on receipt of a certificate to the effect that the food is unfit for human consumption. It is of the greatest importance that food should not be destroyed unless—

- (1) the owner or person in whose possession it is found signs a surrender note ; or
- (2) a condemnation order is given by a justice.

It has been held that the destruction of unsound food without an order of a justice is illegal(s). Where unsound food is surrendered voluntarily a certificate is issued by the inspector and a surrender note signed by the owner. A suitable form of certificate and surrender note is as follows :—

OXFORD CITY COUNCIL. PUBLIC HEALTH DEPARTMENT.
37 PEMBROKE STREET, ST. ALDATES, OXFORD.

.....194

THIS IS TO CERTIFY that I have this day examined.....

.....
.....
.....

in the possession of.....
on the premises.....
and found the same to be diseased/unsound/unwholesome, and
unfit for the food of man, and which was surrendered to me to
be destroyed.

.....*Meat and Food Inspector.*

I hereby surrender the above articles of food to be destroyed.

(r) See *White v. Redfern* (1879), 5 Q.B.D. 15 ; 25 Digest 109, 330.
(s) *Ormerod v. Rochdale Corpn.* (1898), 62 J.P. 153 ; 25 Digest 113, 362.

See *post*, p. 252, for form of surrender note for meat, prescribed by the Ministry of Food for use in controlled slaughter-houses.

When unsound food is taken before a justice, he is concerned solely with the fitness of the food for human consumption. He is not entitled to deal with matters coming within the scope of section 9 of the Act of 1938 (see *post*, p. 232) including questions of responsibility for any offence under that section(*t*). It is not essential that the food should be taken before the justice for condemnation on the same day it is seized by the inspector, but there must be no undue delay. In a case where food seized at 9.30 p.m. in the evening was taken before the justice at 10.30 a.m. the following morning, it was held that there was no undue delay(*u*). The matter will largely depend on the nature of the food and the cause of its unsoundness. In the case of perishable food, liable to deteriorate rapidly, where the unfitness is due to decomposition, it is important that there should be a minimum of delay, otherwise it could be argued that the food was not unsound at the time when it was actually seized by the inspector. On the other hand, with food of a less perishable character and food actually diseased (*e.g.* meat), there is not the same urgency.

In accordance with subsection (4) of section 10, *supra*, the local authority must compensate the *owner* of any food which having been seized is not condemned by the justice. It should be noted that such compensation is in respect of any depreciation in its value resulting from its seizure and removal, and it has been held that an owner of food is not entitled to refuse to take it back if it is offered to him(*v*). It would appear that an owner is not entitled to compensation except in respect of depreciation in the value of the food, any costs incurred by him in opposing the condemnation of the food (*e.g.* expenses of expert witnesses) not being recoverable from the local authority. Where any dispute arises as to the payment of compensation under section 10, *supra*, it must be determined by arbitration, except in cases where the sum claimed does not exceed £50, when the matter may, on the application of either party, be decided by a court of summary jurisdiction(*w*). The conditions governing an arbitration are contained in section 303 of the Public Health Act, 1936(*x*), which is incorporated in the Act of 1938(*y*).

(*t*) See *Thomas v. Van Os*, [1900] 2 Q.B. 448; 25 Digest 113, 371.

(*u*) *Burton v. Bradley* (1886), 51 J.P. 118; 25 Digest 109, 328.

(*v*) *Re Baler and Birkenhead Corpn.*, [1893] 2 Q.B. 77; 25 Digest 109, 331.

(*w*) Sect. 86, Food and Drugs Act, 1938; 31 Halsbury's Statutes 307 and see *ante*, p. 9.

(*x*) 29 Halsbury's Statutes 516.

(*y*) Sect. 96, Food and Drugs Act, 1938; 31 Halsbury's Statutes 311 and see *ante*, p. 9.

Examination of food in course of transit.—An authorised officer is empowered by section 12 of the Act of 1938, *infra*, to examine food intended for sale for human consumption which is in a cart, barrow, or other vehicle, or which is in course of transit, and if found to be unfit, the provisions of section 10 of the Act of 1938 (see *ante*, p. 227) apply.

Section 12, Food and Drugs Act, 1938.—Power to examine food in course of transit.

If an authorised officer of a local authority has reason to suspect that any cart, barrow, or other vehicle, or any container contains any food intended for sale for human consumption, or in the course of delivery after sale for human consumption, he may examine the contents of the vehicle, or, as the case may be, of the container, and for that purpose may, if necessary, detain the vehicle or the container, and, if he finds any food which appears to him to be intended for, but unfit for, human consumption, he may deal with it as food falling within subsection (1) of section ten of this Act and subsections (2) to (4) of that section shall apply accordingly :

Provided that—

- (a) nothing in this section shall authorise the examination of the contents of—
 - (i) any vehicle belonging to a railway company and used by them for the purposes of their undertaking ; or
 - (ii) any authorised vehicle used for the purpose of his business as a carrier of goods by a person holding an A licence or a B licence under Part I of the Road and Rail Traffic Act, 1933 ; or
 - (iii) any container in the possession of a railway company or of any such person as aforesaid as carriers or carrier thereof ; and
- (b) where the duties of an officer of customs and excise with respect to any goods have not been wholly discharged, nothing in this section shall authorise the examination of those goods without his consent.

Articles commonly used for human consumption are, until the contrary is proved, deemed to be intended for sale for human consumption, in accordance with subsection (4) of section 81 of the Act of 1938, *infra*.

Section 81, Food and Drugs Act, 1938.—Evidence of certificates of analysis, and presumptions.

.....

- (4) For the purposes of this Act and of any regulations made thereunder—
 - (a) articles commonly used for human consumption shall, if sold or offered, exposed or kept for sale, be presumed, until the contrary is proved, to have been sold, or, as the case may be, to have been or to be intended for sale, for human consumption ;

- (b) any article commonly used for human consumption which is found on premises used for the preparation, storage, or sale of that article and any article commonly used in the manufacture of products for human consumption which is found on premises used for the preparation, storage or sale of those products, shall be presumed, until the contrary is proved, to be intended for sale, or for manufacturing products for sale, for human consumption ;
- (c) any substance capable of being used in the composition or preparation of any article commonly used for human consumption which is found on premises on which that article is prepared, shall, until the contrary is proved, be presumed to be intended for such use.

The expression “ *article* ” in relation to food does not include a live animal or bird, but with that exception includes in the case of an animal, bird or fish the whole or any part thereof^(z), and the expression “ *animal* ” does not include bird^(z).

A and B licences are issued to persons under the Road and Rail Traffic Act, 1933^(a), enabling them to use their licensed vehicles for the transport of goods for hire or reward or in connection with certain businesses, and food may not be examined when in course of transit in such vehicles (see proviso (a)(ii) to section 12, *supra*).

PENALTY FOR SALE, ETC., OF UNSOUND FOOD.

Any person who sells, etc., unsound food is guilty of an offence under section 9 of the Act of 1938, *infra*.

Section 9, Food and Drugs Act, 1938.—Penalty for sale, etc., of unsound food.

(1) A person who—

- (a) sells, or offers or exposes for sale, or has in his possession for the purpose of sale or of preparation for sale ; or
- (b) deposits with, or consigns to, any person for the purpose of sale or of preparation for sale,

any food intended for, but unfit for, human consumption shall, subject to the provisions of this section, be guilty of an offence.

- (2) Where food in respect of which an offence under paragraph (a) of the preceding subsection has been committed was sold to the offender by some other person, that person also shall, subject to the provisions of this section, be guilty of an offence.
- (3) Where a person is charged with an offence under paragraph (b) of subsection (1) of this section or under the last preceding subsection, it shall be a defence for him to prove either that he gave notice to the person with whom he deposited, or to whom he consigned or sold, the food in question that it was not intended for human consumption, or that, at the time when he delivered or despatched it to that person, either it was fit for human consumption or he did not know, and could not with reasonable diligence have ascertained, that it was unfit for human consumption.

^(z) *Ibid*, sect. 100 ; 31 Halsbury's Statutes 313.

^(a) 26 Halsbury's Statutes 870.

- (4) A person guilty of an offence under this section shall be liable to a fine not exceeding fifty pounds, or to imprisonment for a term not exceeding three months, or to both such a fine and such imprisonment.
- (5) If a person licensed under this Act, or the Public Health (London) Act, 1936, to keep a slaughterhouse is convicted for an offence under this section, the court may, in addition to any other penalty, cancel his licence.
- (6) The justice of the peace before whom any food is brought under the next succeeding section may, but need not, be a member of the court before which a person is charged with an offence under this section in relation to that food.

It is not necessary to prove guilty knowledge(b), and an offence is committed even if the vendor did not know and could not have known that the food was unsound, except in the case of food deposited with or consigned to a person for the purpose of sale or of preparation for sale, when it is proved that at the time when he delivered or despatched it he gave notice that it was not intended for human consumption, or that the food was fit for human consumption or he did not know and could not with reasonable care have ascertained, that it was unfit for human consumption.

It is not necessary for unsound food to have been seized and condemned under section 10 of the Act of 1938 (see *ante*, p. 227) before legal proceedings can be taken(c). It has been held that food stored on a counter behind a screen so as to be invisible to a customer, was not exposed for sale(d). Food exposed on a shop counter is still exposed for sale though it is contained in a wrapper(e). A handbill offering food for sale is not an offering for sale(f). Loaves taken from a baker's van with the intention that they would be sold, are exposed for sale(g). It was held that there was an exposure for sale when food was sent to a purchaser for the purpose of completing an agreement to sell previously entered into between the two parties(h).

It has been held that the word "possession" should be given a popular and not a narrow construction(i). A shop assistant or manager does not have goods in possession for sale, they are in the possession of the employer(k).

It has been clearly laid down that "where two persons stand in such a relation to each other that the law imposes on

(b) *Hobbs v. Winchester Corpn.*, [1910] 2 K.B. 471 ; 25 Digest 111, 351.

(c) *Hewett v. Hattersley*, [1912] 3 K.B. 35 ; 25 Digest 113, 370.

(d) *Crane v. Lawrence* (1890), 25 Q.B.D. 152 ; 25 Digest 124, 456.

(e) *Wheat v. Brown*, [1892] 1 Q.B. 418 ; 25 Digest 124, 457.

(f) *World's Tea Co. v. Gardner* (1895), 59 J.P. 358 ; 25 Digest 123, 445.

(g) *Keating v. Horwood* (1926), 90 J.P. 141 ; Digest Supp.

(h) *Ollett v. Jordan*, [1918] 2 K.B. 41 ; 25 Digest 110, 336.

(i) Lord Reading, C.J., in *Webb v. Baker*, [1916] 2 K.B. 753 ; 25 Digest 110, 346.

(k) *Walkling, Ltd. v. Robinson* (1930), 99 L.J.K.B. 171 ; Digest Supp.

one of those persons a duty to take precautions for the safety of the other person, then, if the person on whom that duty is imposed fails to take proper precautions and the other person is in consequence injured, a clear case of negligence arises''(l). This principle was applied in the case of *M'Alister (or Donoghue) v. Stevenson*(m) where damages were sought in respect of injuries sustained by consuming ginger beer from a bottle which contained the decomposed remains of a snail; and in the case of *Square v. Model Farm Dairies (Bournemouth), Ltd.*(n), where damages were obtained as a result of illness caused by the consumption of milk infected with typhoid germs. It seems clear, therefore, that whether or not action is taken by a local authority under the Act of 1938, any person who suffers injury as a result of the purchase and subsequent consumption of unsound food is entitled to claim damages from the person selling the food.

The fact that food has been condemned by a justice in accordance with section 10 of the Act of 1938 (see *ante*, p. 227) does not preclude the court from admitting evidence to the effect that the food was in fact fit for human consumption(o).

An offence under section 9, *supra*, is committed in respect of each separate portion of food exposed for sale(p). This is particularly important in regard to meat, where separate joints of a diseased carcase may be found exposed for sale in a shop. In such circumstances, the exposure of each joint constitutes a separate offence and a summons may be issued in respect of each joint or piece. In practice, however, it is usual for proceedings to be instituted in respect of a selection of the portions of food exposed instead of for every separate piece. A decision on this point will depend on the nature of each individual case.

It has been held that an officer of a local authority is under no obligation to inform the owner of food that it is unfit for human consumption(q). It has also been held that proceedings may be taken by a sanitary inspector without the prior approval of the local authority, as such proceedings may be taken by a private individual(r). As to the institution of legal proceedings generally, see *ante*, p. 9. Notwithstanding the decisions in the above cases(r), it is not desirable for a sanitary inspector

(l) Per Lord Macmillan, in *Lochgelly Iron and Coal Co., Ltd. v. M'Mullan*, [1934] A.C. 1; Digest Supp.

(m) [1932] A.C. 562; Digest Supp.

(n) [1938] 2 All E.R. 740; 54 T.L.R. 821.

(o) *Waye v. Thompson* (1885), 15 Q.B.D. 342; 25 Digest 112, 361.

(p) *Kenn v. Bell*, [1910] S.C.(J.) 13; 25 Digest 111, o.

R. v. Hartley (1862), 26 J.P. 438; 25 Digest 110, 337.

(q) *Weir v. Thomas & Abson* (1914), 79 J.P. 54; 25 Digest 115, 384.

(r) *Giebler v. Manning*, [1906] 1 K.B. 709; 25 Digest 114, 379.

Cf. *Lake v. Smith* (1911), 76 J.P. 71; 44 Digest 80, 610.

to institute proceedings unless he is authorised, either specially or generally, by the local authority to do so.

FOOD OFFERED AS PRIZES, ETC.

The provisions of the Act of 1938 relating to unsound food apply in the case of food offered as prizes, etc., in accordance with section 11, *infra*.

Section 11, Food and Drugs Act, 1938.—Provisions as to food offered as prizes, etc.

- (1) The foregoing provisions relating to unsound food shall apply in relation to any food which is intended for human consumption and is—
 - (a) offered as a prize or reward in connection with any entertainment to which the public are admitted, whether on payment of money or not ; or
 - (b) offered as a prize or reward or given away for the purpose of advertisement, or in furtherance of any trade or business ; or
 - (c) exposed or deposited in any premises for the purpose of being so offered or given away as aforesaid,
 as if that food were, or had been, exposed for sale—
 - (i) in a case falling within paragraph (a), by each person concerned in the organisation of the entertainment ;
 - (ii) in a case falling within paragraph (b), by the person offering or giving away the food ;
 - (iii) in a case falling within paragraph (c), by the occupier of the premises in question.
- (2) In this section the expression " entertainment " includes any social gathering, amusement, exhibition, performance, game, sport or trial of skill.

MEAT FROM KNACKERS' YARDS.

It is an offence under the Act of 1938 (see *ante*, p. 12) to sell, or offer, or expose for sale for human consumption any part of an animal which has been slaughtered in a knacker's yard. If the person convicted of such an offence is registered under the Act of 1938 (see *post*, p. 253) to keep a slaughter-house or knacker's yard, the court may, in addition to any other penalty, cancel his licence(s).

EMERGENCY PROVISIONS WITH RESPECT TO UNSOUND FOOD.

As a result of the restriction on food supplies due to the war emergency, local authorities were informed in September 1941(*t*) that the Ministry of Food desired, in cases where food

(s) Sect. 19, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 266.

(*t*) Ministry of Health Circular, No. 2468.

was found on inspection to be unfit for human consumption (subject to certain exceptions, *e.g.* meat), that the Food Executive Officer should be notified. In May 1942 the procedure was altered^(u), and again modified in November 1943^(v), consequent upon the revision of the Ministry's Salvage Organisation, and local authorities are now required to notify cases of unsound food either to the Salvage Officer for the area in which the goods are lying or to the appropriate Food Executive Officer or Divisional Food Officer, as may be found convenient, except in the case of the foods in List 2, *infra*. The minimum quantities of food unfit for human consumption in which the Ministry of Food are interested for the purposes of the above arrangement, are as follows :—

Minimum quantities of food which will normally justify removal by the Ministry of Food for salvage purposes :—

List 1.

Sugar	28 lbs.
Eggs, dried	1 barrel or case
Tea	28 lbs.
Dried fruits	5 cwts.
Rice, tapioca, sago	2 cwts.
Peas, beans, lentils	2 cwts.
Oats and other breakfast cereals	2 cwts.
Flour	2 cwts.

List 2.

Articles of food unfit for human consumption to be returned by the vendor direct to the Ministry of Food agents through trade channels.

Butter and cheese	All amounts.
Lard, margarine and cooking fats	"
Bacon and ham	"

If a scheme for the sterilisation of kitchen waste for or on behalf of a local authority is in operation, any unsound food which is not covered by the arrangement detailed above but which is considered to be suitable for animal feeding, should, if possible, be dealt with under that scheme.

As to war-time restrictions on the slaughter of livestock for human consumption, see *post*, p. 252.

(u) Ministry of Health Circular No. 2640, Part II.

(v) Ministry of Health Circular No. 2886.

CHAPTER 9.

MEAT INSPECTION, INCLUDING SLAUGHTERHOUSES AND KNACKERS' YARDS.

The provisions of Part I of the Food and Drugs Act, 1938(a), with respect to unsound food, apply in the case of meat and reference should be made to Chapter 8, *ante*, p. 225 *et seq.*, for full details of the legal and administrative procedure involved.

MEAT INSPECTION.

An authorised officer of a local authority is empowered to examine any meat intended for human consumption, in accordance with the provisions of section 10 of the Act of 1938 (see *ante*, p. 227). The sanitary inspector and medical officer of health are authorised officers for the purposes of this section by virtue of their office and they do not require express authorisation. A member of the Royal College of Veterinary Surgeons employed by a local authority for the purpose of the inspection of food is deemed to be an authorised officer for the purpose of the examination and seizure of *meat*, and so far as meat is concerned such officer does not require to be expressly authorised by the local authority. A local authority are entitled to authorise any other officer to act for the purpose of the enforcement of the provisions of the Act of 1938, including section 10, *supra*, *except in relation to the examination and seizure of meat*, which can only be carried out by a sanitary inspector, medical officer of health or a veterinary surgeon(b).

The inspection of meat is one of the most important sections of food inspection, involving a great deal of the time of those sanitary inspectors within whose areas slaughtering takes place. As to the restriction of slaughtering during the war emergency, see *post*, p. 268. Meat inspection should normally be carried out as a matter of routine, at the time of slaughter, thereby reducing considerably the amount of inspection necessary in shops at the time of sale. It is necessary, however, to carry out fairly regular inspections of meat shops in order to ensure that meat which is passed as fit for human consumption at the time of slaughter does not deteriorate and become unfit at a later date, before it is sold to the consumer.

Sanitary inspectors carrying out the work of meat inspection require to be adequately trained and qualified for the

(a) 31 Halsbury's Statutes 254.

(b) Sect. 100(1), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 313 ; and see *ante*, p. 33.

purpose. This necessitates the completion of a proper course of study and the possession of a certificate as an inspector of meat and other foods. Nowadays it is the practice for most sanitary inspectors to obtain a special qualification in food inspection (see *ante*, p. 34).

Notification of slaughter.—With a view to facilitating the work of meat inspection at the time of slaughter, persons responsible for the slaughter of animals intended for sale for human consumption are required to give notice to the local authority, in accordance with the provisions of Part II of the Public Health (Meat) Regulations, 1924 and 1935(c). Throughout the Regulations the expression “*meat*” means the flesh of cattle, swine, sheep or goats, which is sold or intended for sale for human consumption and “*animal*” means any animal from which meat is derived(d). The Ministry of Health have stated that the “intention in making the Regulations was that, apart from the special case of bacon and ham, they should apply to what is ordinarily known as butcher’s meat, that is to say the raw and untreated edible parts of the carcasses of slaughtered cattle, swine, sheep and goats. Questions have been raised whether the Regulations apply to rabbits, poultry, fish, butter, margarine and cheese. It is clear that the definition of meat would not include these articles, and the Minister thinks that local authorities might also properly treat cooked meat, lard, sausages and other preparations of or containing meat as outside the scope of the Regulations”(e). Reference should, however, be made to chapter 11 (*post*, p. 313) with respect to the provisions of the Act of 1938 relative to the contamination of food of all kinds.

Not less than three hours’ notice of intention to slaughter must be given to the local authority, in accordance with Article 8 of the Regulations, *infra*.

Article 8, Public Health (Meat) Regulations, 1924.

A person shall not slaughter an animal for sale for human consumption unless he has not less than three hours before the time of slaughtering delivered or caused to be delivered to the local authority notice of the day and time and of the place on and at which the slaughtering will take place :

Provided that—

- (1) Where it is the regular practice in any slaughterhouse to slaughter animals at fixed times on fixed days and written notice of this practice has been given to the local authority special notice under this Article shall not be required to be given in respect of any animal slaughtered in accordance with such practice ;

(c) S.R. and O., 1924, No. 1432 ; S.R. and O., 1935, No. 187.

(d) *Ibid*, Art. 2(1).

(e) Circular 604, Ministry of Health, 12th June, 1925.

- (2) Where by reason of accidental injury, illness or exposure to infection, it is necessary that an animal should be slaughtered without delay, the provisions of this Article shall be deemed to be satisfied if notice of the slaughter is given to the local authority as soon as reasonably possible, whether before or after the slaughtering takes place.

Article 10 of the Regulations, *infra*, requires the carcase and internal organs, with certain exceptions, to be retained for a period of three hours after slaughter.

Article 10, Public Health (Meat) Regulations, 1924.

Except as hereinafter provided, the person by whom or on whose behalf an animal is slaughtered for sale for human consumption shall not cause or permit the carcase of the animal, including the mesentery and internal organs other than the stomach, intestines and bladder, to be removed from the place of slaughter until such carcase with its organs has been inspected, or its removal has been authorised, by an inspector of the local authority :

Provided that—

- (1) This Article shall not apply in the case of sheep or in the case of any animal in respect of whose slaughter special notice is not required to be given by reason of proviso (1) to Article 8, unless some part of the carcase or organs appears to be diseased or unsound ;
- (2) The removal may in any case take place at the expiration of three hours from the time of slaughter or six hours from the delivery of any notice relating thereto under Article 8 or 9, whatever time may be later, save that if such time falls between 7 p.m. on one day and 7 a.m. on the next day, the removal shall not take place before 7 a.m. ;
- (3) Where the animal was slaughtered by reason of accidental injury and the place of slaughter is unsuitable for the retention of the carcase, the carcase and organs may be removed to some convenient place, but the notice required to be given under Article 8 shall be given to the local authority in whose district that place is situated and Article 8 and this Article shall have effect as if that place were substituted for the place of slaughter.

It should be noted that individual notice of intention to slaughter is only required where slaughtering takes place at irregular times. Where animals are slaughtered at the same time on the same day of the week, a general notice of intention to slaughter may be given *in writing*, which will continue in operation until cancelled. In practice some latitude is usually allowed by local authorities, and where it is the regular practice to slaughter on certain days of the week, the sanitary inspector usually permits a certain amount of grace with respect to the actual hours of slaughter. In order to facilitate the giving of notice of irregular slaughter, local authorities may supply

books of forms, to be completed by the occupiers of slaughterhouses, and forwarded to the sanitary inspector in addressed envelopes also provided by the authority.

The practical effect of Articles 8 and 10 of the Regulations of 1924 is that a period of not less than six hours must elapse from the time of notification of intention to slaughter (three hours before and three hours after slaughter) before the carcase and internal organs of an animal may be moved from the place of slaughter, subject to the exemptions contained therein. Provided there is a spirit of goodwill on the part of the meat trader and the sanitary inspector, this arrangement should enable the majority of carcasses to be inspected before they leave the slaughterhouse.

Where on the slaughter of an animal for sale for human consumption it appears that any part of the carcase or internal organs is or are diseased or unsound, the person by or on whose behalf the animal was slaughtered must *forthwith* give notice of the fact to the local authority(*f*). It should be observed that the duty of notifying the presence of disease is in addition to and not in substitution of the giving of notice of intention to slaughter required to be given by Article 8 of the Regulations. It is realised that it may not be practicable to arrange for the inspection of every animal at the time of slaughter, particularly in districts where there are large numbers of widely scattered private slaughterhouses in use(*g*), but every effort should be made to inspect the carcasses of animals slaughtered at irregular times and to inspect on every occasion when a notice of disease is received in accordance with Article 9, *supra*. Frequent visits should be made to slaughterhouses where the work is carried on at regular hours. Where it is necessary to restrict the number of carcasses inspected, sheep may be left with less risk than in the case of bovines and pigs.

It will be seen that the position with respect to the removal of carcasses and organs after slaughter is as follows :—

1—In the case of *regular slaughter*, carried out in accordance with proviso (1) to Article 8 of the Regulations (see *ante*, p. 238), the carcase and organs may be removed immediately after slaughter, except where any part thereof appears to be diseased or unsound, in which case notice of that fact must be transmitted to the local authority in accordance with Article 9 (see *supra*), and removal may not then take place until authorised by the officer of the local authority ;

2—In the case of *irregular slaughter*—

(i) sheep carcasses may be moved immediately after slaughter, unless diseased or unsound, in which case notice must be given in accordance with Article 9 ;

(*f*) Art. 9, Public Health (Meat) Regulations, 1924 ; S.R. and O., 1924, No. 1432.

(*g*) Ministry of Health, Circular 547, 29th December, 1924.

(ii) bovine and swine carcasses may be moved—

- (a) at the expiration of three hours from the time of slaughter or six hours from the delivery of notice of intention to slaughter, whichever time may be later, provided that if such time falls between 7 p.m. and 7 a.m., removal may not take place before 7 a.m., and provided there is no evidence of disease or unsoundness, in which case notice of that fact must be given in accordance with Article 9 ;
- (b) after they have been inspected by the officer of the local authority ; or
- (c) removal has been authorised by an officer of the local authority in accordance with Article 10 ; and

(iii) the stomach, intestines and bladder may be removed immediately after slaughter.

Where a local authority under the Diseases of Animals Acts (see *post*, p. 488) receive notice of a case of anthrax in respect of an animal that has died or been slaughtered in the district of a local authority not responsible for the administration of the Diseases of Animals Acts, the Diseases of Animals Acts authority must forthwith notify the other local authority(*h*).

The notices required to be given by Articles 8 and 9 of the Regulations of 1924 must be sent to the specified officer of the local authority at his office, and in the absence of the appointment of a specified officer, must be given to the medical officer of health. Any such notice, with the exception of a notice of regular slaughter, may be given orally(*i*). It is the usual practice to appoint the sanitary inspector as the specified officer to whom notices under Articles 8 and 9 of the Regulations must be sent.

It should be noted that the above provisions relative to the giving of notice of intention to slaughter and of the presence of disease do not apply where the slaughter takes place in a slaughterhouse under the management of a local authority(*k*), nor so as to interfere with the operation or effect of the Diseases of Animals Acts (see *post*, p. 486), or of any Order, licence or act of the Minister of Agriculture and Fisheries, made, granted or done thereunder(*l*).

Method of Inspection.—Every person must, if so required, give all reasonable assistance in his power to an officer of the local authority engaged on the work of meat inspection or carrying out the provisions of the Public Health (Meat) Regulations and must, in relation to anything within his knowledge,

(*h*) Art. 1, Anthrax Order, 1928 ; S.R. and O., 1938, No. 204 ; and see *post*, p. 502.

(*i*) Art. 11, Public Health (Meat) Regulations, 1924 ; S.R. and O., 1924, No. 1432.

(*k*) *Ibid*, Art. 7(2).

(*l*) *Ibid*, Art. 7(1).

furnish any such officer with all information he may reasonably require for the purpose of his duties under the Regulations^(m).

The sanitary inspector, medical officer of health and other officer of a local authority or port health authority duly authorised by the authority in writing, are empowered to enter and inspect, at all reasonable times, any slaughterhouse, room⁽ⁿ⁾ or other place, and any stall or vehicle^(o) to which the Regulations apply^(p).

The Departmental Committee on Meat Inspection^(q) considered the question of uniformity in meat inspection and made certain recommendations which were adopted, with minor modifications, by the Ministry of Health, and issued as a *Memorandum on a System of Meat Inspection* ^(r). This code of instructions for the use of inspectors carrying out meat inspection is intended for guidance and is designed to secure uniformity of inspection and judgment. It has no statutory authority. The rules with regard to the inspection of carcasses and internal organs, are as follows :—

Ministry of Health, Memo. 62/Foods—Meat Inspection—Memorandum on a System of Meat Inspection.

.....

C—General Instructions to Inspectors.

- (i) Every effort should be made to inspect the carcasses and viscera of all animals slaughtered within the area.
- (ii) Knives that have been used for cutting any diseased organ, gland or tissue should not again be used for any purpose until they have been disinfected in boiling water or other suitable disinfectant.
- (iii) The carcase of an animal that is free from disease in the carcase and organs and which is well nourished, should be passed as fit for human consumption.
- (iv) When all diseased portions have been removed from a carcase under the supervision of a meat inspector in accordance with the instructions below, the remainder of the carcase should be passed as fit for human consumption.
- (v) If disease is found in any part of a carcase or in any organ, the whole carcase and all the organs should be examined for evidence of any repetition of the local condition, or modification thereof in other parts, according to the following plan.

(m) S.R. and O., 1924, No. 1432; Art. 5.

(n) "Room" includes a shop, cellar, passage or other space forming the whole or part of a building other than a slaughterhouse—*ibid.*, Art. 2.

(o) "Vehicle" includes a railway or other van or waggon and a ship or barge but does not include any separate compartment thereof in which meat is not being conveyed—*ibid.*

(p) *Ibid.*, Art. 4.

(q) Ministry of Health, July, 1921.

(r) Memo. 62/Foods, issued with Circular 282, Ministry of Health, 16th March, 1922.

D—Method of Examination of Carcasses.

The following instructions indicate the order and method of inspection of all carcasses :—

*Section I—General Principles to be observed.*1—*Viscera.*

- (a) All viscera shall be examined as they are removed from the carcase, or in such circumstances as will ensure that they are the viscera of a particular carcase.
- (b) Every organ and the associated lymph glands shall be examined by the eye and by palpation. When any abnormal condition is observed, the nature and significance of which cannot be determined by such examination, the organ and/or gland shall be incised and the incisions shall be made in such manner as to avoid soiling or contaminating or unnecessarily depreciating the value of any part of the carcase or other organs that may be passed as fit for human food.
- (c) The efficient examination of lymph glands shall be by multiple incisions into their substance.

2—*Carcase.*

- (a) The carcase shall be examined for (1) condition of nutrition ; (2) evidence of bruising, hæmorrhage or discoloration ; (3) local or general dropsy (œdema) ; (4) the efficiency of bleeding ; and (5) swellings or deformities of bones or joints or swellings or other abnormality in the musculature.
- (b) The serous membranes (pleura and peritoneum) shall be examined in every case, and in no case shall they be removed nor shall any evidence of disease be modified or obliterated by washing, rubbing, stripping or in any other manner before examination.
- (c) After the carcase is split, the sternum, ribs, vertebræ and spinal cord shall be examined.

*Section II—Detailed Instructions for Routine Inspection of Carcasses of Bovines and Swine.*1—*Head.*

The head, including (a) the surface and substance of the tongue (which shall be loosened but not detached before examination), (b) the palate or roof of the mouth, and (c) the lymph glands of the throat (retro-pharyngeal, submaxillary and parotid), shall be examined, and the cheek muscles shall be examined by a linear incision parallel to the lower jaw.

2—*Abdominal Cavity.*

- (a) *Stomach, Intestines and Spleen.*—The outer, and when necessary the inner, surfaces of the stomach and intestines, and the surface and substance of the spleen shall be examined, together with the glands of the stomach and bowel (gastro-splenic and mesenteric) and the web (omentum).
- (b) *Liver.*—The surface and substance of the liver shall be examined. The associated glands (hepatic) shall also be examined and the bile ducts incised where necessary.

- (c) *Kidneys*.—The lymph glands of the kidneys (renal) and the adrenal glands shall be examined before the removal of the kidneys. Thereafter the kidneys shall be exposed, and the surface examined and, if necessary, the kidneys shall be split by incision and the substance examined.
- (d) *Uterus and Ovaries*.—The inner and outer surfaces of the uterus, and the substance of the ovaries shall be examined.

(Note.—In reporting upon lesions included in paragraphs 2(a) and 2(d), special attention shall be paid as to whether the lesions affect the peritoneal surface or the organ itself. Unless care in this connection is evinced statistical records become misleading.)

3—*Thoracic Cavity.*

The pluck shall be examined before the various organs are separated from each other, and the following examination shall be made :—

- (a) *Lungs*.—The lungs shall be examined by observation and by palpation and, unless obviously diseased, they shall be incised at the base. The associated lymph glands (bronchial and mediastinal) shall also be examined and, unless obviously diseased, shall be incised.

(Note.—In reporting upon lesions included in paragraph 3(a), distinction should be made between lesions affecting the pleura and those affecting the lung substance (parenchyma).)

- (b) *Heart*.—The heart sac (pericardium) shall be opened and the heart examined and if necessary incised.

(Note.—In reporting upon lesions in paragraph 3(b), distinction should be made between lesions of the pericardium, myocardium and endocardium.)

4—*Udder.*

The udder shall be examined by observation and palpation, incisions shall be made at the base of the teats, and also into any indurated region in the substance of the gland and the associated glands (supra-mammary) shall also be incised.

5—*Testicles and Penis.*

The outer surface and the substance of the testicles and penis and the superficial inguinal glands shall be examined.

6—*Serous Membranes.*

The lining (serous) membranes of the chest and abdomen (pleura and peritoneum) shall be examined in every case.

(Note.—It will be observed that in *all* cases the following glands must be examined as a matter of routine, viz. :—(1) Retro-pharyngeal (in bovines) and submaxillary (in swine); (2) bronchial and mediastinal; (3) hepatic; and (4) mesenteric.)

Section III—Instructions as to Additional Inspection where Evidence of Tuberculosis has been discovered in Bovines or Swine.

Where, as a result of inspection in accordance with Section 2, evidence of tuberculosis has been detected, the carcase and viscera shall be examined in accordance with the following instructions :—

- 1—The viscera and the associated lymph glands shall be examined for evidence of tuberculosis both in the substance and in the covering membranes (capsules). *The existence of tuberculosis in the lymph gland of an organ shall be held to be evidence of the disease in the organ.*
- 2—All the usual lymph glands which are examined in meat inspection work (other than those already enumerated), *viz.* :—the lower cervical, pre-sternal, supra-sternal, sub-dorsal, pre-scapular, supra-mammary (or superficial-inguinal), iliac and sub-lumbar glands, and, if considered necessary, the pre-crural and popliteal glands shall be exposed and examined by incision in every case of tubercle. Those glands which, having regard to visible evidence are least likely to be infected, shall be examined first, *e.g.* if evidence of tuberculosis is found on the pleura the glands of the hindquarter shall be examined before those of the forequarter.
- 3—The carcase of a pig in which lesions of tuberculosis are found in any situation or in any degree shall be split and the vertebrae examined. The kidneys in such a carcase should be freed, but not necessarily detached from the enclosing fatty tissue, the surface should be carefully examined, and if lesions are obvious or suspected, incisions should be made into the substance.

Judgment of diseased meat.—The recommendations of the Ministry of Health relative to the judgment of diseased meat are as follows :—

Ministry of Health, Memo 62/Foods—Meat Inspection—Memorandum on a System of Meat Inspection.

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*Section IV—Instructions as to Action to be taken in the event of evidence of Tuberculosis being found in Bovines and Swine.***A—Organs.**

An organ shall be seized when tuberculosis exists on its capsule, or in its substance, or in the associated lymph glands.

B—Head.

The head, including the tongue, shall be seized if any of the lymphatic glands of the head are affected.

C—Carcase.

- 1—The entire carcase and organs shall be seized when the following conditions are found :—

- (a) Tuberculosis with emaciation ;
- (b) Generalised tuberculosis.

Note.—In determining whether the disease is generalised, the judgment shall be based on the sum of the

evidence of disease throughout the entire carcase and organs. The following conditions shall be regarded as evidence of generalisation :—

- (1) Miliary tuberculosis of both lungs. (*Note.*—This regulation is subject to the following qualification :—In minor instances of miliary tuberculosis of the lung, without evidence of tuberculosis elsewhere and provided the miliary tubercles are not numerous and not of recent origin, it may be possible to pass the carcase. But miliary tuberculosis of the lung even in such a case is evidence of previous systemic infection, and the decision as to whether such a carcase should be condemned should devolve upon the veterinary inspector or the medical officer of health.)
- (2) Where lesions are multiple, acute and actively progressive.
- (3) Where there is multiple and widespread infection of the carcase lymph glands.
- (4) Where there are diffuse acute lesions of both serous membranes (pleura and peritoneum) and any of the carcase lymph glands are enlarged or contain visible tuberculous lesions.
- (5) Where, in addition to the presence of tuberculous lesions in the respiratory or digestive tracts, there are also lesions present in the substance of any one of the following—spleen, kidney, udder (or uterus or ovary), testicle, brain and spinal cord or their membranes. (*Note.*—Notwithstanding this instruction, instances may be found where it would be justifiable to pass the carcase after condemnation of the affected organ. Absence of signs of activity, such as calcification or definite encapsulation would be favourable indications. The decision as to whether such a carcase should be condemned should devolve upon the veterinary inspector or the medical officer of health.)
- (6) Congenital tuberculosis in calves.

2—All cases of tuberculosis not included in the immediately foregoing regulation shall be regarded and treated as localised lesions, and the parts containing the lesions and contiguous thereto shall be condemned.

3—If an organ or portion of a carcase becomes contaminated by tuberculous material, it shall be treated as if it were a case of localised tuberculosis.

Section V—Instructions as to action to be taken in the event of evidence of other Diseases being found in the Carcases of Bovines, Swine, Sheep or Horses.

A—The entire carcase and all the organs shall be condemned if evidence of any of the following conditions is found :—

- 1—Actinomycosis, generalised.
- 2—Anæmia (if pronounced).
- 3—Anthrax.

- 4—Blackleg.
- 5—Bruising, general, extensive and severe, with or without gangrene.
- 6—*Cysticercus bovis* (measly beef), if generalised in the meat substance.
- 7—*Cysticercus cellulosæ* (measly pork), if generalised in the meat substance.
- 8—Decomposition (general).
- 9—Dropsy, general.
- 10—Emaciation, general pathological (associated with disease).
- 11—Erysipelas, acute swine.
- 12—Fever (acute).
- 13—Foot and mouth disease(s).
- 14—Glanders (or farcy).
- 15—Immaturity, stillborn or unborn carcasses.

Immaturity—A carcase shall be considered too immature to produce wholesome meat if—

- (a) The meat has the appearance of being water-soaked, is loose, flabby, tears easily and can be perforated with the fingers ; or
- (b) Its colour is greyish-red ; or
- (c) Good muscular development as a whole is lacking, especially noticeable on the upper shank of the leg, where small amounts of serous infiltrates or small œdematous patches are sometimes present between the muscles ; or
- (d) The tissue which later develops as the fat capsule of the kidneys is œdematous dirty yellow or greyish-red, tough and intermixed with islands of fat.

- 16—Jaundice.
- 17—(Deleted by Memo. 62a/Foods (September, 1937), see section IVa, *post*, p. 248.)
- 18—Malignant catarrhal fever.
- 19—Malignant neoplasms—unless localised, in situation and effect, to one organ.
- 20—Mammitis, acute septic.
- 21—Melanosis, generalised—or any generalised pigmentation.
- 22—Metritis, acute septic.
- 23—Uræmia (or carcasses having a urinous odour.)
- 24—Pericarditis, septic.
- 25—Pneumonia, gangrenous.
- 26—Pyæmia—including joint-ill, or umbilical pyæmia.

(s) The decision as to whether animals affected with this disease shall be slaughtered or otherwise disposed of rests with the officers of the Ministry of Agriculture and Fisheries. If the carcasses and organs of such animals are submitted for human food, the decision as to their fitness for this purpose should devolve upon the medical officer of health or veterinary inspector authorised or appointed by the local authority. In any case, where it is found that the disease is strictly localised, that no signs of septic infection are present, and that there is entire absence of any indication of fevered condition such as wasting, hyperæmia of the internal organs or of the lymphatic glands and of other complications which may arise as sequelæ of the disease, it will be for the consideration of the officers mentioned whether the carcase may be passed for human consumption after removal of the head and feet.

- 27—Rickets with malnutrition.
- 28—Sarcocysts—if generalised in the musculature and visible to the naked eye.
- 29—Septicæmia or septic intoxication.
- 30—Swine fever.
- 31—Tetanus.
- 32—Trichinosis.
- 33—Tumours, multiple in musculature.

B—In all cases in which evidence of diseases not enumerated in Instructions A above is found, the organ or portion of the carcase (or organs or portions of the carcase) affected by the disease, and the organs or portions contiguous thereto, shall be condemned.

Section IVa—Detailed instructions for routine inspection of carcasses of sheep and lambs and action to be taken in the event of caseous lymphadenitis being found(t).

The prescapular, superficial-inguinal or supra-mammary, precrural, iliac, lumbar and renal lymph glands shall be exposed and examined by incision and the kidneys shall be freed and examined, but not necessarily detached from the enclosing fatty tissue.

Viscera—The viscera shall be condemned if they are infected in any degree or if the whole carcase is condemned. If the viscera are free from any lesions they shall be passed unless the whole carcase is condemned.

Carcase (including the head)—If on examination as indicated above, more than one lesion is found, the whole carcase, including the head, and the viscera shall be condemned. If one lesion only is found the carcase shall be cut into the following sections, carrying the lymphatic glands indicated :

<i>Section.</i>	<i>Associated glands.</i>
1—Pair of legs	Precrural. Superficial-inguinal or supra-mammary.
2—Shoulders (2)	Prescapular.
3—(a) Breasts.	
(b) Flanks.	
(c) Scrag ends.	
4—Saddle (2 loins unsplit) ..	Renal and lumbar.

These sections shall be further examined and if no further lesion is found, all the sections, except that in which the one lesion found at the first examination is situated, shall be passed and the affected section condemned. If one or more further lesions are found, whether in the same section as that in which the first was found or in another section or sections, the whole carcase, including the head and the viscera, shall be condemned.

Condemnation of diseased meat.—An authorised officer of a local authority (*see ante*, p. 33) is empowered to seize meat which is diseased or otherwise unsound, and intended for human consumption, and take it before a justice with a view to it being condemned, in accordance with the procedure laid

(t) Memo. 62a/Foods, issued with Circular 1651, Ministry of Health, 6th September, 1937.

down in section 10 of the Act of 1938 (see *ante*, p. 227). In the normal course of meat inspection as carried out at the time of slaughter, it is usually not necessary for an inspector to formally seize and have condemned diseased meat. In the majority of instances the owner of the meat, on being satisfied that it is unfit for human consumption, is prepared to surrender it voluntarily with a view to it being destroyed by the local authority or used otherwise than for the food of man. In such circumstances, however, it is most important that a surrender note should be signed by the owner of the meat *before* it is removed or destroyed, otherwise the local authority may have to meet a claim for compensation. It has been held that the destruction of unsound meat without an order of a justice is illegal^(u). A suitable form of surrender note will be found on p. 229, *ante*.

Meat Marking.—The Departmental Committee on Meat Inspection (see *ante*, p. 242) expressed the opinion that after inspection of the carcase and offal at the place of slaughter it is desirable that some indication should be made on the carcase that it has been inspected and passed as fit for human consumption. Under Part III of the Public Health (Meat) Regulations, 1924, the Minister of Health is empowered to authorise a local authority to adopt a system of meat marking and to approve the mark adopted by the authority for the purpose. Before approving such a scheme the Minister will be required to be satisfied that the local authority have an adequate and competent staff of inspectors and that the criteria laid down in Memorandum 62/Foods (see *ante*, p. 242) are being adopted^(v). Article 15, *infra*, of the Regulations of 1924 governs a meat marking scheme.

Article 15, Public Health (Meat) Regulations, 1924—Meat Marking.

- (1) Where a local authority show to the satisfaction of the Minister that they have made suitable arrangements (including the appointment or employment of competent inspectors) for the inspection of animals at the time of slaughter, the Minister may, on the application of the authority, and subject to such conditions, if any, as he may impose, authorise them to use for the purpose and in the manner specified in these Regulations a distinctive mark of a design approved by him and so devised as to indicate the identity of the local authority and of the inspector using the mark.
- (2) An inspector of a local authority whose mark has been approved by the Minister shall not affix or impress the same to or on any part of the carcase of an animal slaughtered for the food of man unless he has inspected the whole carcase with the organs in position and such part has appeared to him to be free from disease, sound, wholesome and fit for the food of man.

(u) *Ormerod v. Rochdale Corp'n.* (1898), 62 J.P. 153 ; 25 Digest 113, 362.

(v) Circular 547, Ministry of Health, 29th December, 1924.

- (3) The local authority and their inspectors shall comply with any directions given by the Minister as to the use of such mark, and they shall not cause the mark to be affixed to or impressed on any carcase except at the request or with the consent of the person having possession of the carcase at the time of inspection.
- (4) The Minister may at any time revoke his authorisation of the use of a mark or his approval of a mark adopted as aforesaid.

The Ministry of Health state that—

“ It has not been thought expedient that any actual form of mark should be specified in the Regulations, but it is clearly desirable that the marks in use should conform to a common type. It is considered that the marks should be impressed in ink or branded on the carcase itself, and that every mark should comprise (1) the word ‘ Inspected,’ (2) the name of the borough or district, and (3) in areas where more than one inspector is employed, a cypher (such as initials) to identify the individual inspector, these particulars being shown in block lettering within a surrounding line ”(w).

A local authority may not use or permit to be used a mark indicating that a carcase or any part thereof has been inspected unless they have been authorised to do so by the Minister of Health(x). No person, other than an authorised officer of a local authority, may mark meat in accordance with a meat-marking scheme, or use a mark resembling a mark adopted for such a scheme(y). A local authority may make a charge, not exceeding one shilling for each carcase or part of a carcase marked in accordance with a meat-marking scheme(z).

Very few local authorities have adopted a system of meat marking. The Chester City Council secured the approval of the Minister of Health to such a scheme shortly after the Regulations of 1924 came into operation. The following is a brief description of the Scheme(a) :—

Slaughtering takes place at the abattoir and an inspector is on duty during the whole of the time slaughtering is in progress.

On arrival at the abattoir, the inspector makes an ante-mortem examination of each animal and notes any abnormality occurring. Although Article 15(2) requires an inspector to be present to inspect the whole carcase with the organs in position, it was found from the commencement that it was not practicable to do so where a number of animals were in process of slaughtering and dressing at the same time. Nevertheless, every effort is made to comply with the requirement.

As the butchers using the abattoir are accustomed to meat marking, it is an unwritten rule that where a slaughterman, whilst dressing a carcase, finds any unusual or abnormal condition, he immediately ceases further operations and requests the attention of the inspector, who then passes his judgment.

(w) Circular 547, Ministry of Health, 29th December, 1924.

(x) Art. 16, Public Health (Meat) Regulations, 1924; S.R. and O., 1924 No. 1432.

(y) *Ibid*, Art. 17.

(z) *Ibid*, Art. 18.

(a) Kindly supplied by S. H. Moore, Esq., Chief Sanitary Inspector, City of Chester.

When first adopted, the system of meat marking was not popular with the butchers, notwithstanding that the City Council made no charge for marking. Two or three butchers agreed, however, to have their meat marked, and it was not very long before the remainder of the meat traders fell into line, and within twelve months from the adoption of the scheme all the butchers slaughtering in the Chester City Abattoir had accepted meat marking.

When marking was first introduced and carcasses were hanging in the butchers' shops some members of the public thought it was imported meat and raised the question with the butchers. Consequently the City Council printed cards which were hung in all shops informing the public that meat bearing the official mark had been inspected in the City of Chester. The following is a copy of the card, which shows the official mark approved by the Minister of Health :—

MEAT STAMPED WITH THIS MARK



← This mark has been
approved by the
Minister of Health

HAS BEEN INSPECTED IN THE CITY OF CHESTER.

(Actual size of card—9"×6".)

In Chester there are five authorised inspectors, and meat passed by any of them is readily identified by the initial letter in the centre of the stamp. No carcase or offal is removed from the abattoir unless it bears the official stamp. If, for some reason, a carcase has not been stamped, the butcher immediately enquires the reason.

In view of the impossibility of examining every organ *in situ*, it is arranged that offal removed from carcasses shall be so placed as to be readily identified with the carcase from which it was removed. Each carcase and offal is completely inspected and, when passed for food, stamped accordingly. In the case of animals sent in for slaughter as casualties or sent in for slaughter under the Tuberculosis Order, 1938 (see *post*, p. 532), strict compliance with the Regulations are observed, *i.e.* ante-mortem examination, the inspector is present during the slaughtering and dressing of the carcase, and organs are examined *in situ*.

The Chester abattoir is one of the centralised slaughterhouses used by the Ministry of Food during the war emergency (see *post*, p. 268), and the system of meat marking has been continued

unchanged and has been found to work equally satisfactorily under such conditions.

The ink used in marking is of "vegetable" origin and has been examined and certified non-poisonous by the public analyst.

Emergency provisions with respect to slaughter of food animals.—In accordance with the Livestock (Restriction on Slaughtering) (No. 2) Order, 1940(b), no person may slaughter during the war emergency any livestock(c) intended for human consumption, except under licence issued by the Minister of Food (d). The restriction on the slaughter of livestock does not apply to the slaughter of an animal under the provisions of the Diseases of Animals Acts, 1894 to 1937 (see *post*, p. 486), or to an animal where the slaughter is immediately necessary or desirable on account of accidental injury to the animal or its illness(e). In the latter case notice of such slaughter must be given to the District Chairman of Auctioneers at the Collecting Centre nearest to the place of slaughter, within a period of 48 hours(f).

With a view to securing uniformity throughout the country regarding the issue of condemnation certificates, the Ministry of Food have issued a standard form of certificate(g). Supplies of these certificates, made up in books, may be obtained from the Meat and Livestock Division, Stationery Section, Ministry of Food, Rydal Mount, Colwyn Bay, Denbighshire.

The Restriction of Slaughtering Order, *supra*, provided that meat which is not fit for human consumption must be treated in the prescribed manner before leaving the place of slaughter, and no person may sell or otherwise dispose of or offer or expose for sale any such meat unless it has been so treated. The *prescribed manner* means—

"The meat (after opening quarters and all large joints by incision) shall be impregnated with one or other of the following colouring agents in solution, namely, Naphthalene Green, G.S., or Acid Green, G. (such solution to be at the strength of not less than half an ounce of colouring agent to 1 gallon of water, or 2 level teaspoonfuls to 1 gallon), or with such other colouring agent in solution as shall have been approved by the Minister, and the meat shall be treated either by immersing it in the solution or by spraying the meat therewith"(h).

The provisions of the Food and Drugs Act, 1938, relative to the seizure and condemnation of diseased meat, do not apply to food in the possession of the Crown, consequently an inspector of a local authority on becoming aware of diseased or

(b) S.R. and O., 1940, No. 1856, amended by S.R. and O., 1941, No. 199.

(c) "Livestock" means steers, bulls, cows, cow-heifers, heifers, calves' sheep (including rams, ewes and lambs) and pigs; *ibid*, Art. 1.

(d) *Ibid*, Art. 2.

(e) *Ibid*, Art. 3.

(f) *Ibid*, Art 4.

(g) See Circular C3/F/1899, Ministry of Food, 14th June, 1944.

(h) S.R. and O., 1940, No. 1856, Art. 6.

unsound meat in a controlled slaughterhouse must notify the manager thereof, whose duty it is to arrange for the disposal of the meat otherwise than for human consumption. In carrying out work of meat inspection at controlled slaughterhouses, officers of local authorities act as agents of the Minister of Food, but during the continuance of such control they have no statutory powers of seizure under the Act of 1938(*i*).

Penalty for sale, etc., of unsound meat.—Any person who sells, etc., unsound meat is guilty of an offence under section 9 of the Act of 1938 (see *ante*, p. 232). It is important to note that an offence is committed in respect of each separate portion of meat exposed for sale which is unfit for human consumption(*k*).

Meat from knackers' yards.—It is an offence under section 19 of the Act of 1938, *infra*, to sell, etc., meat from an animal slaughtered in a knacker's yard.

Section 19, Food and Drugs Act, 1938.—No part of an animal slaughtered in a knacker's yard to be sold for human consumption.

- (1) No person shall sell, or offer or expose for sale, for human consumption any part of an animal which has been slaughtered in a knacker's yard.
- (2) A person who contravenes the provisions of this section shall be guilty of an offence and, if he is licensed under this Act, or the Public Health (London) Act, 1936, to keep either a slaughterhouse or a knacker's yard, the court may, in addition to any other penalty, cancel his licence.

A local authority may make byelaws with respect to knackers' yards requiring, *inter alia*, that the occupiers of such premises keep records of animals brought into the yards and of the manner in which those animals and the different parts thereof are disposed of (see *post*, p. 269).

Meat offered as prizes, etc.—Meat offered as prizes, etc., is subject to the provisions of the Act of 1938 with respect to unsound food, whether payment is made for it or not(*l*).

Preservatives in meat.—Meat may not contain any preservative (see Chapter 6, *ante*, p. 177) except during the war emergency, when it may contain sulphur dioxide as a preservative, subject to the authority of the Minister of Food and in accordance with any directions given by him(*m*). It

(*i*) See Memo., Control of Slaughtering, issued by Ministries of Health and Food, July, 1940.

(*k*) *Re Hartley* (1862), 31 L.J.M.C. 232; 25 Digest 110, 337.

Kenn v. Bell, [1910] S.C.(J.) 13; 25 Digest 111, o.

(*l*) Sect. 11, Food and Drugs Act, 1938; 31 Halsbury's Statutes 260; and see *ante*, p. 235.

(*m*) Meat (Addition of Preservative) Order, 1941; S.R. and O., 1941, No. 1395.

should be noted that in Scotland, *minced butcher's meat* may contain 450 parts per million of sulphur dioxide during the months of June, July, August and September(n).

TRANSPORT, HANDLING AND SALE OF MEAT.

The transport and handling of meat is dealt with in Article 21 of the Public Health (Meat) Regulations, 1924(o), *infra*.

Article 21, Public Health (Meat) Regulations, 1924—Transport and Handling.

- (1) Every person who conveys or causes to be conveyed any meat in a vehicle—
 - (a) shall cause to be kept clean the inside and covering of the vehicle, the receptacles in which the meat is placed and such parts of any slings or other implements or apparatus used for loading or unloading as come into contact with the meat or its covering; and
 - (b) if the vehicle is open at the top, back or sides or if any other commodity is being conveyed therein, shall cause the meat to be adequately protected by means of a clean cloth or other suitable material; and
 - (c) shall not permit any live animal to be conveyed in the vehicle at the same time as meat.
- (2) A person engaged in the handling or transport of meat—
 - (a) shall not permit any part of the meat to come into contact with the ground; and
 - (b) shall take such other precautions as are reasonably necessary to prevent the exposure of the meat to contamination.
- (3) Every person who employs a person to carry meat in or about a market or other place in which meat is sold by wholesale or in or about any place wholly or mainly used for the storage of meat before it is distributed to retailers, shall cause such person while so occupied to wear a clean and washable head covering and overall.
- (4) This Article shall not apply to any meat which is packed in hampers or other strongly constructed and impervious cases or is adequately wrapped in jute or some other stout fabric.

The expression "vehicle" includes a railway or other van or waggon and a ship or barge but does not include any separate compartment thereof in which meat is not being conveyed(p), so that the provisions of Article 21, *supra*, apply to the transport of meat in ships, barges and railway vans in addition to road vehicles. The Ministry of Health have stated that each deck of a ship would in itself form one or more separate "compartments" and that meat and cattle, for example, may properly be carried on different parts of the same deck without any

(n) Public Health (Preservatives, etc., in Food) Regulations (Scotland), 1921; S.R. and O., 1921, No. 814, as amended in 1926 (S.R. and O., 1926 No. 1603), and in 1927 (S.R. and O., 1927, No. 623).

(o) S.R. and O., 1924, No. 1432.

(p) *Ibid*, Art. 2(1).

special covering of the meat, if those parts are effectively separated(*q*). It should be noted that a port health authority (see *ante*, p. 30) is empowered to enforce the provisions of Article 21, *supra*, within their district(*r*). With regard to paragraph (2)(a), *supra*, the Ministry of Health have expressed the opinion that the word "ground" is not intended to apply to any part of a ship, vehicle or building, and point out that, in Article 19(e) (see *post*, p. 258), where the possibility of a stall being inside a market building is contemplated, the expression is "ground or floor"(*s*). It should also be observed that the provision of overalls and head coverings under paragraph (3), *supra*, is restricted to persons engaged in the *wholesale* distribution of meat, and they cannot be insisted upon in the case of persons employed in retail shops.

A local authority (see *ante*, p. 18) may make byelaws, *inter alia*, with respect to the delivery of food sold or intended for sale for human consumption(*t*).

The sale of meat from shops and stalls is governed by Parts IV and V of the Public Health (Meat) Regulations, 1924(*u*). Article 20, *infra*, deals with shops, stores, etc.

Article 20, Public Health (Meat) Regulations, 1924—Shops, Stores, etc.

(1) The occupier of any room in which any meat is sold or exposed for sale or deposited for the purpose of sale or of preparation for sale or with a view to future sale, and any person who knowingly lets any room or suffers any room to be occupied for such purpose shall cause the following provisions to be complied with:—

- (a) No urinal, water-closet, earth-closet, privy, ashpit or like sanitary convenience shall be within such room or shall communicate directly therewith, or shall be otherwise so placed that offensive odours therefrom can penetrate to such room ;
- (b) No cistern for supplying water to such room shall be in direct communication with or directly discharge into any such sanitary convenience ;
- (c) No drain or pipe for carrying off faecal or sewage matter shall have any inlet or opening within such room unless it is efficiently trapped ;
- (d) No such room shall be used as a sleeping place, and, so far as may be reasonably necessary to prevent risk of the infection or contamination of any such meat as aforesaid, no sleeping place shall communicate directly with such room ;
- (e) Except in the case of a room used as a cold store, adequate means of ventilation shall be provided.

(*q*) Circular 604, Ministry of Health, 12th June, 1925.

(*r*) Art. 3, Public Health (Meat) Regulations, 1924 ; S.R. and O., 1924, No. 1432.

(*s*) Circular 604, Ministry of Health, 12th June, 1925.

(*t*) Sect. 15, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 264 ; and see *post*, p. 317.

(*u*) S.R. and O., 1924, No. 1432.

- (2) The occupier of any such room shall not cause or suffer any refuse or filth whether solid or liquid to be deposited or to accumulate therein except so far as may be reasonably necessary for the proper carrying out of the trade or business.
- (3) Such occupier shall cause the walls and ceiling of such room to be whitewashed, cleansed or purified as often as may be necessary to keep them in a proper state.
- (4) Such occupier and every other person engaged in such room shall observe due cleanliness in regard to such room and all articles, apparatus and utensils therein.
- (5) The occupier of any such room—
 - (a) shall take all such steps as may be reasonably necessary to guard against the contamination of the meat therein by flies and shall cause the meat to be so placed as to prevent mud, filth or other contaminating substance being splashed or blown thereon ;
 - (b) shall not permit any gut-scraping, tripe-cleaning or household washing to be carried on therein ;
 - (c) shall cause every counter, slab, vessel or other article on or in which meat is placed for sale and all knives and other implements used in connection with the meat to be thoroughly cleansed after use and to be kept at all times in a cleanly condition ;
 - (d) shall cause all trimmings, refuse and rubbish to be placed in properly covered receptacles kept for the purpose apart from any meat intended for sale.

These provisions should be compared with those applying generally to all rooms where food intended for sale is prepared or stored, etc.(v). The expression "room" in Article 20, *supra*, includes a shop, cellar, passage or other space forming the whole or part of a building other than a slaughterhouse(w). So far as paragraph (5)(a), *supra*, is concerned, the Ministry of Health have stated—

" It was not contemplated that this provision should be construed as requiring all butchers' shops to be provided with glass fronts, and the precautions which it may be reasonable to require under this provision must depend on the circumstances of individual cases. It seems to the Minister that in its enforcement the corresponding provisions of Article 19(b) and (d) should be borne in mind and that the same general standard of freedom from contamination should be aimed at both for shops and for stalls.

" The steps necessary to protect meat against contamination must depend on the circumstances of the shop or stall in relation to the sources of possible contamination and also on the conditions under which trade is carried on. In no circumstances, however, should meat be allowed to project outside the limits of the wall or screen of the shop or stall, where it would be especially exposed to contamination from the street, and it should be kept as far within those limits as is practicable. Where meat has to be kept near to an open window the general rule should be that it should be covered with clean muslin or other suitable material, but

(v) See sect. 13, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 261 ; and see *post*, p. 313.

(w) Art. 2(1), Public Health (Meat) Regulations, 1924 ; S.R. and O., 1924, No. 1432.

local authorities will no doubt realise that, when a brisk trade is being carried on, this precaution may have to be suspended so that meat may be readily accessible "(x).

Notwithstanding the views of the Ministry of Health expressed above, some local authorities have insisted on the provision of glass fronts to meat shops. It is difficult to see how the requirements of paragraph (5)(a) can be satisfactorily complied with if meat is allowed to be exposed to the street. In view of the fact that many meat traders, including the large multiple firms, have fixed glass windows to all their shops and the meat does not suffer in consequence, it is clearly unnecessary to permit meat to be exposed in shops with open fronts. The position with regard to stalls is more difficult, but here the suggestion of the Ministry to the effect that meat should be covered with muslin or other material may be adopted with success. As to what is "reasonably necessary" in this connection is ultimately a matter for the court to determine. If the local authority are not satisfied that the necessary steps have been taken to protect meat from contamination they may charge the person concerned with a contravention of the Regulations and the court would then decide (subject to a right of appeal to Quarter Sessions) on the facts of each individual case, whether the steps taken were reasonable.

So far as the handling of meat in shops by customers is concerned, the Ministry of Health have stated that it is not a matter which lends itself to control by regulation. "It is felt that a specific prohibition of such a practice, where the customer is the party mainly at fault, could not be effectively enforced, but that the co-operation of the trade might with advantage be invited in securing its discontinuance. It is therefore suggested that meat traders should be asked to exhibit notices urging customers not to handle meat before purchase "(y).

The sale of meat from stalls is subject to the provisions of Article 19 of the Regulations of 1924, *infra*.

Article 19, Public Health (Meat) Regulations, 1924—Stalls.

A person selling meat or exposing or offering meat for sale from any stall—

- (a) shall keep his name and address legibly painted or inscribed on such stall in some conspicuous position ;
- (b) shall cause such stall (if not placed in an enclosed and covered market place) to be suitably covered over and to be screened at the sides and back thereof in such a manner as to prevent mud, filth or other contaminating substance being splashed or blown from the ground upon any meat on the stall ;

(x) Circular 604, Ministry of Health, 12th June, 1925.

(y) Circular 547, Ministry of Health, 29th December, 1924.

- (c) shall cause every counter, slab, vessel or other article on or in which meat is placed for sale, and all knives and other implements used in connection with the meat to be thoroughly cleansed after use and to be kept at all times in a cleanly condition ;
- (d) shall take all such steps as may be reasonably necessary to guard against the contamination of the meat by flies ;
- (e) shall not place or cause to be placed any meat on or within eighteen inches of the ground or floor, unless the meat is placed in a closed cupboard or other adequately protected space not less than nine inches from the ground or floor ;
- (f) shall cause all trimmings, refuse and rubbish to be placed in properly covered receptacles kept for the purpose apart from any meat intended for sale.

The expression " *stall* " includes any stall, barrow or vehicle from which meat is offered for sale in a street or other open space or in any market place(z).

A local authority (see *ante*, p. 18) may resolve, in accordance with the provisions of section 16 of the Act of 1938 (see *post*, p. 320), that any person who in a street or other place of public resort sells, or offers or exposes for sale, meat from a stall, or from a cart, barrow or other vehicle, or from a basket, pail, tray or other container used without a stall or vehicle, must have his name and address legibly and conspicuously displayed on the stall, vehicle or container.

IMPORTED MEAT.

The special provisions relative to imported meat will be found in Chapter 13, *post*, p. 337.

SLAUGHTERHOUSES AND KNACKERS' YARDS.

A *slaughterhouse* means any premises used in connection with the business of slaughtering animals, the flesh of which is intended for sale for human consumption(a). For the purposes of the Public Health (Meat) Regulations, 1924(b), *slaughterhouse* means such part of a slaughterhouse, as defined in section 4 of the Public Health Act, 1875 (see now section 100, Food and Drugs Act, 1938, *supra*), as is used for the slaughtering of animals or the dressing or hanging of carcasses for human consumption(c).

A *knacker's yard* means any premises used in connection with the business of slaughtering, flaying or cutting up animals, the flesh of which is not intended for human consumption(d). It has been held that premises used for purposes connected

(z) Art. 2(1), Public Health (Meat) Regulations, 1924 ; S.R. and O., 1924, No. 1432.

(a) Sect. 100, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 313.

(b) S.R. and O., 1924, No. 1432.

(c) *Ibid.* Art. 2(1).

(d) Sect. 100, Food and Drugs Act, 1938 , 31 Halsbury's Statutes 313.

with or incidental to slaughtering (e.g. lairs for cattle, etc.) are included within the definition of slaughterhouse(e). For the purposes of the Slaughter of Animals Act, 1933, a *knacker's yard* means any building, premises or place used in connection with the business of killing animals not killed for butcher's meat(f); and for the purposes of the Protection of Animals Act, 1911, the expression *knacker* means a person whose trade or business it is to kill any cattle not killed for the purpose of the flesh being used as butcher's meat, and the expression *knacker's yard* means any building or place used for the purpose, or partly for the purpose, of such trade or business, and the expression *cattle* includes any horse, ass, mule, bull, sheep, goat or pig(g).

The provisions relating to slaughterhouses and knackers' yards are contained in Part V of the Act of 1938(h); the Slaughter of Animals Act, 1933(i); the Protection of Animals Act, 1911(k); and the Public Health (Meat) Regulations, 1924(l). As to powers of entry of officers of local authorities to slaughterhouses and knackers' yards, see *ante*, p. 43.

The provisions of Part V of the Act of 1938 do not apply to any slaughterhouse or knacker's yard belonging to the Port of London Authority or the Mersey Docks and Harbour Board and forming part of an imported animals wharf or landing-place approved by the Minister of Agriculture and Fisheries under the Diseases of Animals Acts, 1894 to 1937 (see *post*, p. 497), for the purpose of the landing of imported animals(m).

PRIVATE SLAUGHTERHOUSES AND KNACKERS' YARDS.

Licensing.—The occupier and any other person other than the occupier may not use any premises as a slaughterhouse or knacker's yard, or permit them to be so used, unless the occupier holds a licence from the local authority (see *ante*, p. 18) authorising the premises to be used as a slaughterhouse, or, as the case may be, a knacker's yard, granted in accordance with the provisions of section 57 of the Act of 1938, *infra*.

Section 57, Food and Drugs Act, 1938.—Licensing of slaughterhouses and knackers' yards.

(1) It shall not be lawful—

- (a) for the occupier of any premises to use them as a slaughterhouse or knacker's yard or permit them to be so used, unless he holds a licence granted under this section by the local authority authorising him to keep those premises as a slaughterhouse or, as the case may be, as a knacker's yard; or

(e) *Hides v. Littlejohn* (1896), 60 J.P. 101; 38 Digest 223, 549.

(f) Sect. 9, Slaughter of Animals Act, 1933; 26 Halsbury's Statutes 652.

(g) Sect. 15, Protection of Animals Act, 1911; 1 Halsbury's Statutes 380

(h) 31 Halsbury's Statutes, 282–291.

(i) 26 Halsbury's Statutes 647.

(k) 1 Halsbury's Statutes 373.

(l) S.R. and O., 1924, No. 1432.

(m) Sect. 63, Food and Drugs Act, 1938; 31 Halsbury's Statutes 291.

- (b) for any person other than the occupier to use any premises as a slaughterhouse or knacker's yard, unless the occupier of those premises holds in respect thereof such a licence as aforesaid :

Provided that the occupier of any premises which immediately before the commencement of this Act were registered or licensed as a slaughterhouse or knacker's yard under any enactment repealed by this Act, and were then in use as such, shall be deemed to hold in respect of those premises a licence granted under this section and expiring at the expiration of four months from the commencement of this Act.

- (2) A local authority on receiving from the occupier of, or a person proposing to occupy, any premises an application for the grant or renewal of a licence authorising him to keep those premises as a slaughterhouse, or as a knacker's yard, may grant or renew to him a licence in respect of those premises :

Provided that the authority—

- (a) shall not grant a licence, otherwise than by way of renewal of an existing licence, until an officer of the authority has inspected the premises named in the application and has made a report thereon ;
 - (b) shall not refuse to grant or renew a licence in respect of premises which immediately before the commencement of this Act either were registered as a slaughterhouse or, as the case may be, a knacker's yard, or were premises in respect of which a licence without limitation of time authorising their use as a slaughterhouse or, as the case may be, a knacker's yard was in operation at that date, and in either case were then in use as such, unless they are satisfied that the applicant is not a proper person to keep such a place, or that the premises named in the application are not suitable for use for the purpose in question.
- (3) If, on an application for the grant or renewal of a licence in respect of any such premises as are mentioned in proviso (b) to the last preceding subsection, it appears to the local authority that the premises are not suitable for use as a slaughterhouse or, as the case may be, a knacker's yard, then, unless they are satisfied that it is not reasonably practicable to render the premises suitable, they shall adjourn the application and serve on the applicant a notice specifying the works which, in their opinion, must be carried out in order to render the premises suitable and allowing a reasonable time, not being less than three months from the service of the notice, for the execution of those works.
- A notice served under this subsection shall operate as a grant or renewal of a licence to the applicant until the expiration of one month after the expiration of the time fixed by the notice, or of any extension thereof granted by the authority.
- (4) A local authority may require a person who applies for the grant or renewal of a licence under this section to give to them, before his application is considered, information as to any similar licence which he holds, or has held, either in their district or in the district of any other local authority, and, if an applicant who is so required gives to the authority any information which is false in any material respect, he shall be guilty of an offence.

- (5) If a local authority refuse to grant or renew a licence under this section, they shall forthwith give notice to the applicant of their decision in the matter, and shall, if so required by him within fourteen days of their decision give to him within forty-eight hours a statement of the grounds on which it was based.
- (6) A person aggrieved by the refusal of a local authority to grant or renew a licence under this section may appeal to a court of summary jurisdiction.
- (7) A licence under this section shall remain in force for such period not exceeding thirteen months as may be fixed by the local authority, but may from time to time be renewed by them for a period not exceeding thirteen months at any one time.
- (8) A person who uses any premises as a slaughterhouse or knacker's yard in contravention of the provisions of this section, or permits any premises to be so used, shall be guilty of an offence.

It should be noted that where premises were in use as a slaughterhouse or knacker's yard on 30th September, 1939⁽ⁿ⁾, whether registered or licensed as such, the occupier of the premises was deemed to hold in respect thereof a licence for a period of four months, expiring on 31st January, 1940. In other words, local authorities were allowed a period of four months in which to review the condition of all slaughterhouses and knackers' yards in their districts. It will be observed that only those premises *in use* as slaughterhouses or knacker's yards at 30th September, 1939, were deemed to be licensed for a period of four months from that date. The use of premises for pining cattle only, as part of the business of slaughtering, the actual slaughtering taking place elsewhere, has been held to be a continuance of user^(o), and the occasional use of the premises for slaughtering purposes, carried on without the knowledge of the local authority, is also a continuance of user^(p). A person who merely pays the owner of the slaughterhouse for being allowed to slaughter animals there does not use such premises as a slaughterhouse^(q), but paragraph (b) of subsection (1) of section 57, *supra*, now places such a person in the same position as the actual occupier of the slaughterhouse.

Where a person who holds a licence in respect of a slaughterhouse or knacker's yard dies the licence enures for the benefit of his widow or any other member of his family, unless previously revoked or cancelled, until the expiration of two months from his death, or until the expiration of such longer period as the licensing authority may allow^(r).

⁽ⁿ⁾ The date preceding the date of coming into operation of the Food and Drugs Act, 1938.

^(o) *Hides v. Littlejohn* (1896), 60 J.P. 101 ; 38 Digest 223, 549.

^(p) *Woolliscroft v. Stoke-on-Trent Corpn.* (1928), 92 J.P. 150 ; Digest Supp.

^(q) *R. v. Heyworth, etc. and West Derby Hundred JJ.* (1866), 30 J.P. 423 ; 38 Digest 222, 545.

^(r) Sect. 97, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 312 ; and see *ante*, p. 15.

The position with regard to slaughterhouses and knackers' yards prior to the passage of the Act of 1938, was very involved. Section 57 of the Act of 1938, *supra*, replaced sections 125 to 127, Towns Improvement Clauses Act, 1847(s), which were incorporated in the Public Health Act, 1875(t) and section 29 of the Public Health Acts Amendment Act, 1890(u). The Local Government and Public Health Consolidation Committee gave very full consideration to the position, and the following extracts from their Third Interim Report(v) set out the position as it existed prior to 1938, and the arguments leading to the adoption of the new procedure detailed in section 57 of the Act of 1938, *supra*.

Para. 55—The Public Health Acts treat slaughterhouses and knackers' yards as a single subject, the term "slaughterhouse" being defined in Section 4 of the Act of 1875 as including places "commonly called knackers' yards." Section 169 of the same Act empowers urban authorities to provide slaughterhouses, and incorporates Section 125–131 of the Towns Improvement Clauses Act, 1847, which relate to slaughterhouses and knackers' yards.

Put shortly, the effect of these sections is as follows. By Section 125, the Commissioners (*i.e.* the body empowered to execute any Act with which the Act of 1847 was incorporated, and thus under the Act of 1875, the local authority) are empowered to license slaughterhouses and knackers' yards. Section 126 provides that, unless licensed, a place is not to be used as a slaughterhouse or knackers' yard unless so used "at the passing of the special Act." Section 127 requires existing slaughterhouses and knackers' yards to be registered. Section 128 empowers the Commissioners to make byelaws for various purposes connected with slaughterhouses and knackers' yards, and Section 129 empowers justices to suspend or revoke licences or forbid for a period the use of registered premises in the event of the occupier being convicted of breaches of the Act or byelaws. The remaining two sections relate to penalties and to entry, inspection and seizure of unfit carcasses.

Under Section 29 of the Act of 1890 licences for slaughterhouses (including knackers' yards) granted after the adoption of Part III of that Act were made temporary (the minimum period being 12 months) and Section 31 of the same Act provided for the revocation of a licence on conviction of the occupier of the premises for the sale of meat unfit for food.

Para. 56—As regards local authorities, the provisions of the Act of 1847 referred to above came into operation on many different dates, namely :—

- (a) the date of any local Act incorporating the provisions ;
- (b) the date on which the authority or their predecessors adopted the Local Government Act, 1858 (*i.e.* a date not earlier than the 2nd August, 1858) ;
- (c) the date of the passing of the Act of 1875 (*i.e.* the 11th August, 1875) ;
- (d) the date on which the place became included in a borough or urban district ;

(s) 13 Halsbury's Statutes 572, 573.

(u) 13 Halsbury's Statutes 836.

(t) Sect. 169 ; 13 Halsbury's Statutes 696.

(v) Cmd. 5628, 17th December, 1937.

- (e) the date on which a rural district council were invested with the urban powers of Section 169 of the Act of 1875 ; or
- (f) the date on which the Rural District Councils (Slaughterhouses) Order, 1924 (S.R. and O., No. 1431), an order investing rural district councils generally with these powers, came into operation (1st January, 1925).

Section 29 of the Act of 1890, together with other slaughterhouse powers, has been adopted in all but 65 urban areas and has been put into force in all rural districts.

The effect is that there are at present three classes of slaughterhouses and knackers' yards, *viz.* :—

- (a) those registered, *i.e.* those which were in existence at the material date set out above and have continued in use ever since ;
- (b) those licensed without limitation of time ; and
- (c) those licensed after the adoption of the Act of 1890 for periods of not less than one year.

Para. 57—It was held in *Goodwin v. Sale*, [1907], 2 K.B. 278 that a licence under the Towns Improvement Clauses Act, 1847, is related both to the slaughterhouse and to the occupier, and accordingly that it would cease to operate on the death of the occupier or on any change of occupation. In view of the general adoption of the Act of 1890 it is probable that there are now very few licences operating under (b) without limit of time.

In London all slaughterhouses and knackers' yards are subject to annual licensing (Sections 144 and 145 of the London Act(*vv*)).

Para. 58—The considerations mentioned above lead to the conclusion that all licences might, following the principle adopted in the Act of 1890, be made temporary and to this end Clause 58 of the Bill provides that licences shall not be given for longer periods than 13 months. As regards slaughterhouses which are not registered slaughterhouses, the existing discretion of a local authority to refuse to grant or renew a licence for any reason is retained, but a right of appeal to a court of summary jurisdiction and further appeal to quarter sessions—as in the registration clauses of the Bill—is given.

Para. 59—The position of *registered* premises, that is, premises used as a slaughterhouse or knacker's yard before the date on which the Towns Improvement Clauses Act, 1847, came into operation in the area, and continuously so used since that date, is more difficult, but on the whole we came to the conclusion that the proper course was to make these premises also subject to a temporary licence, but to recognise their peculiar position by providing for the automatic renewal of the licence unless the authority are satisfied that the premises are unsuitable for use, or that the applicant is not a proper person to keep a slaughterhouse or knacker's yard. In support of this course it may be mentioned that registered slaughterhouses and knackers' yards being the oldest are generally the least satisfactory from a structural point of view, and that the Departmental Committee on Meat Inspection which reported in July, 1921, recommended in paragraph 51 of their Report that "the occupiers of all private slaughterhouses should be required to obtain an annual licence from the local authority."

Para. 60—As regards knackers' yards, licences under the Knackers Acts of 1786 and 1844 were annual, and accordingly the case for bringing them under the ordinary licensing provision is still stronger.

Upon the receipt of an application for the grant or renewal of a licence authorising the use of premises as a slaughterhouse or knacker's yard, the local authority *may* grant or renew such licence. Except in the case of the renewal of a licence, the authority may not grant a licence until the premises concerned have been inspected and reported upon by an officer of the authority^(w). In deciding as to the suitability of premises for use as a slaughterhouse or knacker's yard, the local authority should bear in mind the following suggestions as to the site and structure of slaughterhouses, which were printed by the Ministry of Health in the preface to the model byelaws with respect to such premises issued before the Act of 1938, but it should be remembered that such conditions are merely recommendations and not binding on the authority.

- 1—The premises to be erected should not be within 100 feet of any dwelling-house and the site should be such as to admit of free ventilation by direct communication with the external air on two sides at least of the slaughterhouse.
- 2—Lairs for cattle in connection with the slaughterhouse should not be within 100 feet of a dwelling-house.
- 3—The slaughterhouse should not in any part be below the surface of the adjoining ground.
- 4—The approach to the slaughterhouse should not be on an incline of more than 1 in 4, and should not be through any dwelling-house or shop.
- 5—No room or loft should be constructed over the slaughterhouse.
- 6—The slaughterhouse should be provided with an adequate tank or other proper receptacle for water, so placed that the bottom shall not be less than 6 feet above the level of the floor of the slaughterhouse.
- 7—The slaughterhouse should be provided with means of through ventilation.
- 8—The slaughterhouse should be well paved with asphalt or concrete and laid with proper slopes and channels towards a gully, which should be properly trapped and covered with a grating, the bars of which should not be more than $\frac{3}{8}$ inch apart. Provision for the effectual drainage of the slaughterhouse should also be made.
- 9—The surface of the walls in the interior of the slaughterhouse should be covered with hard, smooth, impervious material to a sufficient height.
- 10—No water-closet, privy or cesspool should be constructed within the slaughterhouse. There should be no direct communication between the slaughterhouse and any stable, water-closet, privy or cesspool.
- 11—Every lair for cattle in connection with the slaughterhouse should be properly paved, drained and ventilated. No habitable room should be constructed over any lair^(x).

(w) Sect. 57(2)(a), Food and Drugs Act, 1938; 31 Halsbury's Statutes 287.
 (x) Ministry of Health, Model Byelaws, Series VI.

A local authority cannot refuse to grant or renew a licence in respect of premises which were in use as a registered or licensed slaughterhouse or knacker's yard without limit of time, on 30th September, 1939, unless they are satisfied—

- (a) that the applicant is not a proper person to keep such a place ;
or
- (b) that the premises concerned are not suitable for use either as a slaughterhouse or knacker's yard(y).

If a local authority are satisfied that premises in use as a slaughterhouse or knacker's yard on the above date are not suitable for that purpose, they must, unless satisfied that it is not reasonably practicable to render the premises suitable, adjourn the application for a licence and serve on the applicant a notice specifying the works which will, in their opinion, render the premises suitable and allowing a reasonable time, not being less than three months from the service of the notice, for the execution of those works. Such a notice operates as a grant or renewal of a licence to the applicant for a period of one month after the expiration of the time fixed by the notice, or of any extension thereof granted by the authority(z).

Where a local authority refuse to grant or renew a licence in respect of a slaughterhouse or knacker's yard, they must forthwith give notice to that effect to the applicant and, if required by him within fourteen days of the date of such notice, supply to him within forty-eight hours a statement of the grounds on which their refusal is based(a). A person aggrieved by the refusal of a local authority to grant or renew a licence may appeal to a court of summary jurisdiction(b). The procedure in case of such an appeal is by way of complaint for an order and the Summary Jurisdiction Acts apply to the proceedings. The appeal must be brought within twenty-one days from the date on which notice of the authority's refusal was served on the applicant, and the making of the complaint is deemed to be the bringing of the appeal. The notice of the local authority's refusal to grant or renew a licence must state the right of appeal and the time within which it may be brought(c). An aggrieved person may appeal from the decision of a court of summary jurisdiction to quarter sessions(d). Where an appeal is lodged against a decision of the local authority or a court of summary jurisdiction, the appellant is entitled to carry on business and to use the premises as a slaughterhouse or knacker's yard until the time for appealing

(y) Sect. 57(2), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 287.

(z) *Ibid*, sect. 57(3) ; 31 Halsbury's Statutes 288.

(a) *Ibid*, sect. 57(5) ; 31 Halsbury's Statutes 288.

(b) *Ibid*, sect. 57(6) ; 31 Halsbury's Statutes 288.

(c) *Ibid*, sect. 87 ; 31 Halsbury's Statutes 307 ; and see *ante*, p. 14.

(d) *Ibid*, sect. 88 ; 31 Halsbury's Statutes 308 ; and see *ante*, p. 14.

has expired or until the appeal is finally disposed of or abandoned, or has failed for want of prosecution(e).

If a person convicted of an offence against any byelaws with respect to slaughterhouses and knackers' yards (see *post*, p. 269) holds a licence under section 57 of the Act of 1938 (see *ante*, p. 259), the court may, in addition to any other penalty, cancel the licence(f).

The provisions of section 57 of the Act of 1938 with respect to the licensing of slaughterhouses, do not apply to a public slaughterhouse provided by a local authority(g).

Occasional slaughtering on unlicensed premises.—The occasional slaughter of animals on unlicensed premises was dealt with by the Ministry of Health in Circular 604(h) as follows:—

“ It appears that some apprehension is being felt as to the effect of this Order on farmers and cottagers who occasionally slaughter pigs or sheep of their own rearing for sale to their neighbours. In considering this question it is to be observed that there is nothing in the Order itself or in the provisions of the Public Health Acts which it puts into operation in rural districts specifically prohibiting the slaughter of an animal otherwise than in a licensed or registered slaughterhouse.

“ The only provision as to the limitation of slaughtering is contained in Section 126 of the Towns Improvement Clauses Act, 1847, and is in the following terms:—

‘ No place shall be used or occupied as a slaughterhouse . . . which was not in such use and occupation at the time of the passing of the special Act and has so continued ever since unless and until a licence for the erection thereof or for the use and occupation thereof as a slaughterhouse . . . has been obtained . . . ’

“ The term ‘ *slaughterhouse* ’ is defined in the Public Health Act, 1875, as including the buildings and places commonly called slaughterhouses and knackers' yards and any building or place used for slaughtering cattle, horses, or animals of any description for sale.

“ The joint effect of these two provisions is that in the absence of established user no place may be used for slaughtering animals for sale without a licence. The Minister is advised that the word ‘ used ’ in the provisions cited must be construed as having reference to some regular user and that a single slaughtering is not prohibited. Should any particular case come before the courts, it would be a question to be decided on the facts whether the amount of slaughtering carried on was sufficient to constitute use as a slaughterhouse within the meaning of the statute, and the courts might well have regard to the question, not only as to the number of animals slaughtered there, but as to whether the animals slaughtered are reared on the same farm,

(e) Food and Drugs Act, 1938, sect. 90; 31 Halsbury's Statutes 308; and see *ante*, p. 15.

(f) *Ibid*, sect. 58(3); 31 Halsbury's Statutes 289.

(g) *Ibid*, sect. 60(3); 31 Halsbury's Statutes 290; and see *post*, p. 272.

(h) 12th June, 1925.

smallholding or premises, or are brought from elsewhere.

“ The matter is, of course, one which is within the administration of the District Council, and the Minister thinks that, in the absence of any guiding legal decision on the subject, they might properly construe the statute as allowing the slaughter on a farm or smallholding or cottage premises of a reasonable number of sheep or pigs reared thereon and sold for consumption in the neighbourhood, without the necessity for registration or licensing.”

It should be noted that section 57 of the Act of 1938 (see *ante*, p. 259) prohibits the occupier of any premises *using* them as a slaughterhouse. As pointed out by the Ministry of Health, *supra*, there is nothing in the statutes which definitely prohibits the slaughter of an animal on unlicensed premises, provided such premises are not *used* as a slaughterhouse. It is clearly the view of the Ministry that the occasional use of premises for the slaughter of animals does not constitute the use of such premises as a slaughterhouse. The practice with regard to the occasional slaughter of animals on unlicensed premises varies with different local authorities. As a general rule, authorities permit not more than a specified number of animals (*e.g.* usually not exceeding four) to be slaughtered on any one premises during a period of one year. This practice is almost entirely confined to the slaughter of pigs, and in some areas, where cottagers regularly keep pigs primarily for their own use, it presents a problem of some magnitude. In a Scottish case(*i*), where a labourer killed two pigs in the garden of the house of the owner of the animals, which was not licensed as a slaughterhouse, it was held, on the facts, that the accused was not a “ person carrying on the business of slaughterer of cattle ” or of using premises as a slaughterhouse, in contravention of the provisions of the Public Health (Scotland) Act(*k*). Each case must be considered on its merits, and local authorities have no option but to accept the view of the Ministry of Health and permit the occasional slaughter of animals on unlicensed premises. It should be noted that the provisions of the Public Health (Meat) Regulations, 1924(*l*), with respect to the giving of notice of intention to slaughter (see *ante*, p. 238) apply in the case of the occasional slaughter of animals *where any portion of the carcase or organs is intended for sale for human consumption*. Similarly, the provisions of the Act of 1938 relative to the seizure and condemnation of diseased, etc., food apply to such cases (see *ante*, p. 227). Where a person kills an animal intended for his own consumption, no portion of which is offered for sale, notice of intention to slaughter need not be given, nor do the provisions with regard to unsound food apply.

(*i*) *Renfrew C.C. v. Anderson* (1899), 1 F. (Ct. of Sess.) (J.) 48.

(*k*) 1897, sect. 33(1) (60 & 61 Vict., c. 38). (*l*) S.R. and O., 1924, No. 1432.

During the present emergency a licence for the occasional slaughter of pigs must be obtained from the Ministry of Food. Such licence is obtained from the local Food Executive Officer and application must be made on Form A.L.P. (A) Revd., and full particulars of the Scheme are contained in Ministry of Food Leaflet F. 904, obtainable from any Food Control Office.

Emergency provisions with respect to slaughterhouses.—In accordance with the Livestock (Restriction on Slaughtering) (No. 2) Order, 1940(*m*), the Minister of Food has arranged that the slaughter of animals for sale shall not be carried out except at—

- (a) certain slaughterhouses provided by local authorities. In these, slaughtering will be carried out on behalf of the Minister of Food, under agreements made by him in each case with the local authority ; and
- (b) certain other slaughterhouses, of which the Minister of Food has taken possession under Defence (General) Regulations, 1939(*n*).

The Minister of Food has been advised that where he is the occupier on behalf of the Crown of a private slaughterhouse under these arrangements no licence under section 57 of the Act of 1938 (see *ante*, p. 259) is required. In pursuance of his desire that normal meat inspection shall continue, the Minister has instructed the persons in charge of such slaughterhouses to give the same facilities for entry by the officers of local authorities as would exist in ordinary private slaughterhouses.

Sign to be displayed on slaughterhouses or knackers' yards.—The occupier of a slaughterhouse or knacker's yard, in respect of which a licence issued by the local authority is in force, must display in a conspicuous position on the premises a legible notice with the words "*Licensed Slaughterhouse*" or "*Licensed Knacker's Yard*," as the case may be. Failure to comply with this requirement renders the person in default liable to a fine not exceeding 40s.(*o*), but it does not apply to a public slaughterhouse provided by a local authority(*p*).

Infected persons not to take part in slaughtering.—No person who is for the time being suffering from a notifiable disease(*q*), may take part in the slaughtering of animals

(*m*) S.R. and O., 1940, No. 1856, as amended by S.R. and O., 1941, No. 199.

(*n*) See Memo, Control of Slaughtering, issued by the Ministries of Health and Food, January, 1940.

(*o*) Sect. 59, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 289.

(*p*) *Ibid*, sect. 60(3) ; 31 Halsbury's Statutes 290.

(*q*) "*Notifiable disease*" means smallpox, cholera, diphtheria, membranous croup, erysipelas, scarlatina or scarlet fever, typhus fever, typhoid fever, enteric fever, relapsing fever, and as respects any particular district, any infectious disease to which Part V of the Public Health Act, 1936, or any corresponding enactment repealed by that Act has been applied by the local authority of the district in manner provided by that Part or that enactment—sect. 343, Public Health Act, 1936 ; 29 Halsbury's Statutes 536.

intended for human consumption or in the handling of meat(*r*). It should be noted that this prohibition operates in respect of *notifiable* diseases only and not all infectious diseases.

Certain work not to be carried on in slaughterhouses.—No gut-scraping, tripe-cleaning, manufacture or preparation of articles of food for man or for animals, household washing or work of any nature other than is involved in the slaughter and the dressing of carcasses may be carried on in any slaughterhouse, and no articles may be stored therein except such implements, appliances, receptacles and other articles as may be required for the slaughter of animals and processes directly connected therewith, including the dressing, hanging and storage of carcasses, the cleansing of the slaughterhouse and the removal of refuse(*s*).

No person may use a slaughterhouse for the slaughter of any animal which previous to slaughter was not intended for human consumption(*t*).

Inflation of carcasses.—No person may blow or inflate with his breath, or in any other manner likely to cause infection or contamination, the carcass or any part of the carcass of any animal slaughtered for human consumption(*u*).

Byelaws with respect to slaughterhouses and knackers' yards.—A local authority (see *ante*, p. 18) may make byelaws with respect to slaughterhouses and knackers' yards in accordance with the provisions of section 58 of the Act of 1938, *infra*.

Section 58, Food and Drugs Act, 1938.—Byelaws as to slaughterhouses and knackers' yards.

(1) A local authority may make byelaws—

- (a) for securing that slaughterhouses and knackers' yards are kept in a sanitary condition and are properly managed, and for preventing cruelty therein; and
- (b) requiring persons licensed under this Act to keep knackers' yards to keep, and produce when required, records of animals brought into the yards and of the manner in which those animals and the different parts thereof were disposed of.

(2) Nothing in the Slaughter of Animals Act, 1933, shall be construed as restricting any power to make byelaws under paragraph (a) of the preceding subsection or as rendering invalid any byelaw made under any corresponding enactment repealed by this Act.

(3) If a person convicted of an offence against any byelaws made under this section holds a licence under the last preceding section, the court may, in addition to any other penalty, cancel the licence.

(*r*) Public Health (Meat) Regulations, 1924; S.R. and O., 1924, No. 1432, Art. 6.

(*s*) *Ibid*, Art. 12.

(*t*) *Ibid*, Art. 14.

(*u*) *Ibid*, Art. 13.

The Ministry of Health have issued a model series of byelaws with respect to private slaughterhouses(v), and the procedure governing the making of such byelaws is contained in the Local Government Act, 1933(w). The Minister of Health is the confirming authority in respect of any such byelaws(x). Byelaws made under section 58, *supra*, do not apply to a public slaughterhouse provided by a local authority(y).

The breach of slaughterhouse byelaws by a servant of the occupier renders the latter liable for a breach thereof(z).

Elimination of private slaughterhouses.—The desirability of reducing the number of private slaughterhouses was referred to in the Report of the Departmental Committee on Meat Inspection(a) and also in the Report of the Committee of the Economic Advisory Council on the Slaughtering of Livestock. In view of these recommendations and of the general policy underlying the Livestock Industry Act, 1937(c), provision is made in section 61 of the Act of 1938, *infra*, for the elimination of private slaughterhouses, (a) by purchase by agreement; (b) by closure by agreement; and (c) on the provision of adequate public slaughterhouse accommodation, by a resolution of a local authority, to be approved by the Minister of Health, that after a specified date existing licences shall cease to have effect and no further licences shall be granted.

Section 61, Food and Drugs Act, 1938.—Elimination of private slaughterhouses.

(1) A local authority may with a view to reducing the number of private slaughterhouses—

- (a) acquire by agreement any premises within the district which are used as a slaughterhouse and discontinue the use of the premises for that purpose;
- (b) agree with the persons interested in any premises within the district which are used as a slaughterhouse for the discontinuance of slaughtering on those premises.

(2) Subject to the following provisions of this section, a local authority who have provided a public slaughterhouse may determine that, after such date as may be fixed by their resolution, no fresh licence to keep premises as a slaughterhouse shall be granted by them under this Act, and that on the said date all such licences then in force shall cease to have effect and shall not be renewable;

Provided that the resolution shall not have effect until it has been approved by the Minister.

(v) Series VI, obtainable from H.M.S.O.

(w) Sect. 250; 26 Halsbury's Statutes 440; and see the author's "*Sanitary Administration*," Second Edition, 1944, London, Butterworth & Co., Ltd., pp. 5 *et seq.*

(x) Sect. 91, Food and Drugs Act, 1938; 31 Halsbury's Statutes 308.

(y) *Ibid.*, sect. 60(3); 31 Halsbury's Statutes 290.

(z) *Collman v. Mills*, [1897] 1 Q.B. 396; 14 Digest 44, 128.

(a) 16th July, 1921, published by H.M.S.O., paras. 28 *et seq.*

(c) 30 Halsbury's Statutes 3.

- (3) So soon as any such resolution as aforesaid has been passed, it shall be published in one or more local newspapers circulating in the district and a copy shall be served on every person licensed under this Act to keep a slaughterhouse within the district, and the Minister, before approving the resolution, shall take into consideration any representation received by him within two months after the publication of the resolution, and shall not approve the resolution unless he is satisfied that there will be slaughterhouse accommodation adequate to meet the needs of the inhabitants of the district.
- (4) A resolution under this section may exempt from the operation thereof any specified existing slaughterhouse and may reserve power for the local authority, with the approval of the Minister, to grant for special reasons a fresh licence, and the Minister in approving a resolution may modify it by inserting such an exemption or reservation.
- (5) The licence of an existing slaughterhouse exempted by virtue of the last preceding subsection and a fresh licence granted by virtue thereof shall, notwithstanding anything in the foregoing provisions of this Part of this Act, be made subject to such conditions, including a condition that during a specified period a renewal of the licence shall not be refused on any ground except the unsuitability of the holder or of the premises, as the Minister in approving the resolution, or, as the case may be, in approving the grant of the fresh licence, may determine to be reasonable.
- (6) The owner and the occupier of any premises in the district which at the date when the resolution of the local authority became operative were lawfully being used as a slaughterhouse shall be entitled to receive compensation from the authority for any loss sustained by them by reason of its being no longer lawful to use those premises as a slaughterhouse :
Provided that if a slaughterhouse is structurally defective or otherwise open to objection on sanitary grounds, the arbitrator in determining the amount of compensation shall have regard to that fact.
- (7) Where under a local Act a local authority are required to pay or tender compensation in respect of slaughterhouses of any specified class the use of which is rendered unlawful by reason of the provision of a public slaughterhouse by the authority, then for the purposes of that requirement a slaughterhouse which immediately before the commencement of this Act was a slaughterhouse of any such class shall be deemed to continue to be such a slaughterhouse so long as it remains licensed under this Act.

It will be observed that in accordance with subsection (6), *supra*, the owner and the occupier of a slaughterhouse dealt with under section 61, *supra*, are entitled to receive compensation from the authority for any loss sustained, provided that if a slaughterhouse is structurally defective, or otherwise open to objection on sanitary grounds, the arbitrator in determining the amount of compensation must have regard to that fact. Any question as to the amount of compensation payable must be determined by arbitration unless the amount claimed is less than £50, in which case the matter may be decided by a

court of summary jurisdiction(*d*). As to arbitration proceedings, see the provisions of the Public Health Act, 1936(*e*), which are incorporated in the Act of 1938(*f*).

In considering whether slaughterhouses to be eliminated are structurally defective or otherwise open to objection on sanitary grounds, regard should be had to the provisions of any byelaws in operation in the district and the suggestions made by the Ministry of Health with respect to the site and structure of slaughterhouses (see *ante*, p. 264).

Although a local authority are empowered to provide public slaughterhouses (see *infra*), it should be noted that where they acquire private slaughterhouses in accordance with the provisions of section 61, *supra*, they cannot use them as public slaughterhouses; their use as slaughterhouses must be discontinued.

PUBLIC SLAUGHTERHOUSES.

A local authority (see *ante*, p. 18) may provide public slaughterhouses in accordance with the provisions of section 60, *infra*, but any proposal involving the erection of a slaughterhouse within the district of another local authority requires the consent of that authority.

Section 60, Food and Drugs Act, 1938.—Power of local authority to provide public slaughterhouses.

(1) A local authority may provide public slaughterhouses :

Provided that any proposal to provide under this section a slaughterhouse within the district of another local authority shall require the consent of that authority, but such consent shall not be unreasonably withheld, and any question whether or not consent is unreasonably withheld shall be referred to and determined by the Minister.

(2) A local authority by whom a public slaughterhouse has been provided under this section, or under any enactment repealed by this Act, or by the Public Health Act, 1875—

(a) shall make byelaws for securing the slaughterhouse is kept in a sanitary condition and is properly managed and for preventing cruelty therein ;

(b) may make such charges in respect of the use of the slaughterhouse as the Minister may have approved, or such less charges as they may from time to time determine ;

(c) may provide plant or apparatus for treating or disposing of waste matters and refuse resulting from the slaughtering of animals in the slaughterhouse.

(3) Nothing in the three last preceding sections shall apply in relation to a public slaughterhouse provided by a local authority under this, or any other, Act.

(*d*) Sect. 86, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 307.

(*e*) Sect. 303 ; 29 Halsbury's Statutes 516.

(*f*) Sect. 96, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 311.

It should be noted that a local authority have no power to provide a knacker's yard. A local authority who have provided a public slaughterhouse may employ persons to slaughter or stun animals, in accordance with the provisions of the Slaughter of Animals Act, 1933(*g*), and may make such charges as they consider reasonable for the services of the persons so employed(*h*).

Where a local authority have provided a public slaughterhouse they must make byelaws with respect thereto. The Ministry of Health have issued a model series of byelaws(*i*). The procedure with respect to the making of such byelaws is contained in the Local Government Act, 1933(*k*). The Minister of Health is the confirming authority in respect of byelaws made with respect to public slaughterhouses(*l*).

Public slaughterhouses are not subject to the provisions of the Act of 1938 relating to private slaughterhouses with respect to licensing(*m*), byelaws(*n*) and the display of a sign outside the premises(*o*), whether the public slaughterhouse is provided by the local authority under the Act of 1938 or under any other Act(*p*).

Cold-air stores and refrigerators.—A local authority (see *ante*, p. 18) who have provided, or are about to provide, a public slaughterhouse may, with the approval of the Minister of Health, provide a cold-air store or refrigerator for the storage and preservation of meat and other articles of food, and may make charges in respect of the use of any such premises(*q*).

Construction of public slaughterhouses or abattoirs.—The Ministry of Agriculture and Fisheries have issued a Report by a Technical Committee on Abattoir Design(*r*). Before proceeding with plans for a public slaughterhouse a local authority should study this Report in detail, as it deals comprehensively with the structure, lay-out and equipment of abattoirs.

PROVISIONS WITH RESPECT TO THE SLAUGHTERING OF ANIMALS.

The slaughtering of animals is governed by the provisions of the Slaughter of Animals Act, 1933(*s*), and the Protection

(*g*) 26 Halsbury's Statutes 647.

(*h*) Slaughter of Animals Act, 1933, sect. 6 ; 26 Halsbury's Statutes 651.

(*i*) Series VIa, obtainable from H.M.S.O.

(*k*) Sect. 250 ; 26 Halsbury's Statutes 440.

(*l*) Sect. 91(1), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 308.

(*m*) *Ibid*, sect. 57 ; 31 Halsbury's Statutes 287 ; and see *ante*, p. 259.

(*n*) *Ibid*, sect. 58 ; 31 Halsbury's Statutes 288 ; and see *ante*, p. 269.

(*o*) *Ibid*, sect. 59 ; 31 Halsbury's Statutes 289 ; and see *ante*, p. 268.

(*p*) *Ibid*, sect. 60(3) ; 31 Halsbury's Statutes 290 ; and see *supra*.

(*q*) *Ibid*, sect. 62 ; 31 Halsbury's Statutes 291 ; and see *post*, p. 484.

(*r*) Economic Series No. 40, published by H.M.S.O., 25th June, 1934.

(*s*) 26 Halsbury's Statutes 647.

of Animals Act, 1911(*t*). As to the giving of notice of intention to slaughter animals for human consumption, with a view to the subsequent inspection of the carcasses and organs, see *ante*, p. 238. The Ministries of Health and Food have stated that under the war-time emergency arrangements, while slaughterhouses are in the occupation of the Crown, the operation of the Slaughter of Animals Act, 1933, apart from the right of entry to premises thereby conferred(*u*), is not affected(*v*).

Methods of slaughter of animals.—Section 1 of the Slaughter of Animals Act, 1933, *infra*, provides that no animal(*w*) may be slaughtered *in a slaughterhouse or knacker's yard* unless it is instantaneously slaughtered or by stunning is instantaneously rendered insensible to pain, and such slaughtering or stunning must be effected by means of a mechanically operated instrument in proper repair. It should be noted that the Act of 1933 does not apply to the slaughter of animals otherwise than in a slaughterhouse or knacker's yard.

Section 1, Slaughter of Animals Act, 1933.—Provisions as to slaughter of certain animals in slaughterhouses and knackers' yards.

- (1) No animal to which this section applies shall be slaughtered in a slaughterhouse or knacker's yard except in accordance with the following provisions, that is to say, every such animal shall be instantaneously slaughtered, or shall by stunning be instantaneously rendered insensible to pain, until death supervenes, and such slaughtering or stunning shall be effected by means of a mechanically operated instrument in proper repair :

Provided that no person shall be liable for any contravention of the provisions of this subsection in respect of—

- (a) the slaughter of any pig, boar, hog or sow in a slaughterhouse or knacker's yard in which there is not available a supply of electrical energy unless it is proved that such a supply could reasonably have been made available ; or
 - (b) the slaughter of any animal slaughtered without the infliction of unnecessary suffering—
 - (i) by the Jewish method for the food of Jews and by a Jew duly licensed for the purpose by the Rabbinical Commission constituted in accordance with the provisions of the First Schedule to this Act ; or
 - (ii) by the Mohammedan method for the food of Mohammedans and by a Mohammedan.
- (2) This section shall not apply within the area of any local authority to any animal which in that area is exempt from the application thereof under the section of this Act next following, but save as aforesaid this section applies to all animals.

(*t*) 1 Halsbury's Statutes 373.

(*u*) Sect. 7, Slaughter of Animals Act, 1933 ; 26 Halsbury's Statutes 651.

(*v*) Memo, Control of Slaughtering, issued by Ministries of Health and Food, January, 1940.

(*w*) "*Animal*" means any horse, mare, gelding, pony, foal, colt, filly, stallion, ass, donkey, mule, bull, cow, bullock, heifer, calf, steer, ox, sheep, ewe, wether, ram, lamb, pig, boar, sow, goat or kid ; sect. 9, Slaughter of Animals Act, 1933 ; 26 Halsbury's Statutes 652.

The constitution of the Rabbinical Commission is prescribed in Schedule 1 of the Act of 1933, *infra*.

First Schedule, Slaughter of Animals Act, 1933.—Rabbinical Commission.

The Rabbinical Commission for the licensing of Shochetim (Jewish ritual slaughterers) shall be forthwith set up constituted as follows:—

The Chief Rabbi of the United Hebrew Congregations of the British Empire for the time being who shall be the permanent chairman ;

One member to be appointed by the Spanish and Portuguese Synagogue (London) who shall be a vice-chairman ;

Three members to be appointed by the Beth Din appointed by the United Synagogue (London) ;

Two members to be appointed by the Federation of Synagogues (London) ;

One member to be appointed by the Union of Orthodox Hebrew Congregations (London) ;

Two members to be appointed by the president for the time being of the London committee of deputies of British Jews to represent provincial congregations.

The commission shall be entitled to exercise its functions notwithstanding any vacancy in its constitution, and four members shall form a quorum.

Mechanical stunning is not made compulsory by the Act for any pig, boar, hog or sow in a slaughterhouse or knacker's yard unless a supply of electrical energy is available, or can reasonably be made available. It should be noted, however, that the power to make byelaws with respect to cruelty under section 58 of the Act of 1938 (see *ante*, p. 269) is not restricted by the provisions of section 1 of the Slaughter of Animals Act, 1933, *supra*, and it would appear that such byelaws may go beyond the scope of the Act of 1933. Accordingly, some local authorities have thus extended the requirement with respect to the use of a mechanically operated slaughtering instrument to pigs slaughtered in slaughterhouses where no electrical energy is available.

It will be observed that section 1, *supra*, does not apply to any animal which in the area of any local authority is exempt in accordance with the provisions of section 2, *infra*.

Section 2, Slaughter of Animals Act, 1933.—Application of last foregoing section.

- (1) Every local authority shall within twelve months after the passing of this Act consider the question whether they will pass a resolution applying the last foregoing section to all or any of the following animals, that is to say, sheep, ewes, wethers, rams and lambs ; and if such a resolution is at any time (whether within the said twelve months or thereafter) passed by a local authority relating to any such animals, the last foregoing section shall in their area apply to those animals accordingly, but in any area in which no such resolution is in force the said animals shall be exempt from the application of the last foregoing section.

- (2) If at any time a resolution is passed by a local authority exempting either goats or kids or both such animals from the application of the last foregoing section in their area, the animals to which the resolution relates shall, while the resolution is in force, accordingly be exempt in that area from the application of the last foregoing section.
- (3) The following provisions shall have effect with respect to any such resolution as is mentioned in the foregoing provisions of this section—
 - (a) not less than twenty-eight days before the meeting of the local authority at which the resolution is to be proposed special notice of the meeting and of the intention to propose the resolution shall be given to every member of the local authority, and the like notice shall also be inserted at least once in one or more of the newspapers circulating within the area of the authority;
 - (b) a resolution, after being passed, shall be published by advertisement in one or more of the newspapers circulating within the area of the local authority by whom it is passed, and may also be published otherwise in such manner as the local authority think sufficient for giving notice thereof to all persons interested;
 - (c) a copy of every such resolution passed by a local authority shall be sent to the Minister of Health;
 - (d) any such resolution passed by a local authority may be rescinded or varied by a subsequent resolution, but the foregoing provisions of this subsection shall apply with respect to any such subsequent resolution.
- (4) The following provisions shall have effect with respect to any alteration of the areas of local authorities, that is to say :
 - (a) any resolution in force under this section in the altered areas shall—
 - (i) as respects any area reduced, continue in force until rescinded or varied by the local authority;
 - (ii) as respects any areas extended, apply for a period of three months after the extension (unless rescinded within that period) to the whole of the area extended and shall then be deemed to be rescinded as respects the whole area unless in the meanwhile a new resolution has been passed by the local authority;
 - (b) if at any time a local authority is newly constituted or the area of any local authority is extended, the local authority shall consider the question in subsection (1) of this section within three months after the constitution of the authority or after the extension as the case may be.

This section required every local authority, within a period of twelve months from 28th July, 1933, to consider whether they would pass a resolution applying the provisions relating to mechanical stunning to sheep, ewes, wethers, rams and lambs. In the absence of such a resolution, which may be passed by a local authority at any time, such animals are exempt from mechanical stunning. A local authority may at any time pass a resolution exempting either goats or kids, or

both, from the provisions of section 1, *supra*, with respect to mechanical stunning. The Ministry of Health have suggested forms of resolution and notices suitable for the purposes of section 2, *supra*(*x*). It should be noted that the provisions relating to mechanical stunning only apply to animals slaughtered in a slaughterhouse or knacker's yard and not to animals slaughtered elsewhere (*e.g.* cottagers' pigs, etc.).

Apart from the provisions of sections 1 and 2 of the Act of 1933 (see *ante*, pp. 274 and 275), with respect to the use of mechanically operated stunning instruments, the following rules laid down in the Second Schedule to the Act, apply to all slaughterhouses and knackers' yards(*y*).

Second Schedule, Slaughter of Animals Act, 1933.—Provisions as to Slaughterhouses and Knackers' Yards.

- 1—Every person engaged^a in driving or bringing any animal to the place of slaughter shall—
 - (a) avoid, so far as practicable, driving or bringing the animal over any ground which is likely to cause the animal to slip or fall; and
 - (b) otherwise adopt such methods and precautions as will prevent the infliction upon the animal of unnecessary suffering and pain.
- 2—Every occupier of a slaughterhouse or knacker's yard shall cause every animal brought to such slaughterhouse or knacker's yard for the purpose of being slaughtered to be provided with a sufficient quantity of wholesome water, and when it is necessary to confine any such animal for a period exceeding twenty-four hours with a sufficient quantity of wholesome food.
- 3—Every occupier of a slaughterhouse or knacker's yard and every servant of such occupier, and every other person employed upon the premises in the slaughtering of cattle, shall, before proceeding to stun any horse, mare, gelding, pony, foal, colt, filly, stallion, ass, donkey, mule, bull, ox, bullock, cow, heifer or steer, cause the head of such animal to be securely fastened in such a position as to enable such animal to be felled with as little pain or suffering as practicable, and shall in the process of slaughtering any animal use such instruments and appliances and adopt such method of slaughter, and otherwise take such precautions as may be requisite to secure the infliction of as little pain and suffering as possible.
- 4—A person shall not, so far as is practicable without structural alteration to premises existing at the passing of this Act, slaughter, or cause or suffer to be slaughtered, any animal in the view of another animal.
- 5—A person shall not use any instrument for slaughtering or stunning any animal unless his ability and physical condition qualify him to use it without inflicting unnecessary pain on the animal, nor shall he use a mechanically operated instrument in such manner or in such circumstances or in such a state of want of repair as to incur the risk of causing unnecessary suffering to an animal.

(*x*) Appendix to Circular 1349, Ministry of Health, 30th August, 1933.

(*y*) Sect. 4, Slaughter of Animals Act, 1933; 26 Halsbury's Statutes 650.

- 6—An occupier of a slaughterhouse or knacker's yard shall not (so far as is reasonably practicable to avoid it) cause or allow any blood or other refuse to flow from such slaughterhouse or knacker's yard so as to be within the sight or within the smell of any animal in the slaughterhouse or knacker's yard, and he shall not cause or allow any such blood or other refuse to be deposited in the waiting pens or lairs so far as it is reasonably practicable to avoid it.

In addition to the provisions of the Slaughter of Animals Act, 1933, previously referred to, a local authority is empowered to make byelaws with respect to slaughterhouses and knacker's yards dealing, *inter alia*, with the prevention of cruelty(z).

The following rules, *inter alia*, apply in the case of the slaughter of animals by a knacker :—

- 1—All animals must be slaughtered, with as little suffering as possible, within two days from the time they have been delivered to the knacker ; any animal which is in pain must be so slaughtered without delay ;
- 2—All animals must be properly fed and watered after they have been delivered to the knacker ;
- 3—No animal may be used or employed for any work after it has been delivered to the knacker ; and
- 4—No animal may be killed in the sight of any other animal awaiting slaughter(a).

If any person contravenes the provisions of the Slaughter of Animals Act, 1933, he is liable to a penalty in accordance with the provisions of section 5, *infra*.

Section 5, Slaughter of Animals Act, 1933.—Penalties.

If any person slaughters or stuns, or attempts to slaughter or stun, an animal in a slaughterhouse or knacker's yard in contravention of the provisions of section one or of subsection (1) of section three of this Act, or knowingly makes any false statement for the purpose of obtaining a licence under this Act, or contravenes or causes or permits any contravention of the provisions set out in the Second Schedule to this Act, he shall be liable on summary conviction to a fine not exceeding twenty pounds, or on a conviction subsequent to a second conviction to imprisonment for a period not exceeding three months or to a fine not exceeding twenty pounds, or to both such imprisonment and fine :

Provided that a person shall not be liable for any such contravention as aforesaid if he proves that by reason of an accident or other emergency the contravention was necessary for preventing physical injury or suffering to any person or animal.

Any person who contravenes the provisions of the Protection of Animals Act, 1911, is liable on summary conviction to a fine not exceeding £10(b).

(z) Sect. 58, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 288 ; and see *ante*, p. 269.

(a) Sched. 1, Protection of Animals Act, 1911 ; 1 Halsbury's Statutes 381 ; and see *post*, p. 281.

(b) *Ibid*, sec. 5(1) ; 1 Halsbury's Statutes 376.

Licensing of slaughtermen.—No animal may be slaughtered or stunned *in a slaughterhouse or knacker's yard* except by a person who has been granted a licence by the local authority in accordance with section 3 of the Act of 1933, *infra*, except in the case of the slaughter of an animal under the Diseases of Animals Acts, 1894 to 1927(c), by an officer of or person employed by the Ministry of Agriculture and Fisheries.

Section 3, Slaughter of Animals Act, 1933.—Prohibition of slaughter and stunning except by licensed slaughtermen.

- (1) No animal shall be slaughtered or stunned in a slaughterhouse or knacker's yard by any person who is not the holder of a licence granted by a local authority and in force under this section :

Provided that this sub-section shall not apply with respect to the slaughter of any animal under the Diseases of Animals Acts, 1894 to 1927, by an officer of or person employed by the Minister of Agriculture and Fisheries.

- (2) No licence shall be granted under this section except to a person of the age of eighteen years or upwards who is, in the opinion of the local authority, a fit and proper person to hold such a licence.
- (3) A licence under this section shall be in force for such period not exceeding three years as may be specified therein and may be renewed from time to time at the discretion of the local authority.
- (4) A licence shall be in force in the district of the local authority granting the licence and also in the district of any other local authority, and the licence shall be produced on demand for inspection by such other local authority.
- (5) The local authority may suspend the operation of a licence within their area at any time for such period as they may determine and, where they are satisfied that the person is no longer a fit and proper person to hold a licence, the local authority by whom the licence was granted may revoke the licence.
- (6) Any person aggrieved by the refusal of the local authority to grant or renew a licence or by the suspension or revocation by the local authority of a licence may appeal to a court of summary jurisdiction against such refusal, suspension, or revocation, within one month of the intimation thereof, and the decision of the court of summary jurisdiction shall be final.
- (7) A fee, not exceeding two shillings, may be charged by the local authority for each such licence, and a fee, not exceeding one shilling, for every renewal thereof.
- (8) The provisions of this section shall apply to any licence granted by the local authority for the purpose of the provisions of this Act with regard to the Jewish and Mohammedan methods of slaughter.
- (9) Any person applying for a licence shall in such application state—
 - (a) whether he holds a licence granted under this Act in any area or areas other than that to which his application relates and the names of any such areas ;
 - (b) whether he has been refused a licence or has had a licence suspended or revoked in any other area and, if so, the name of that area ; and
 - (c) whether he has any similar application pending in any other area and, if so, the name of that area.

It should be observed that a licence to slaughter granted by a local authority enables the holder thereof to slaughter within the area of *any* local authority. No rules have been laid down for the guidance of local authorities with respect to the issue of licences to slaughtermen, except that a licence may not be granted to a person under 18 years, and each case must be considered on its merits. Although there is a statutory barrier to a licence being granted to a woman under the corresponding Scottish Act^(d), there is nothing to prevent such a course being followed in England and Wales. The point is not likely to arise often, but it might be important where a butcher's business is taken over by his widow.

The licensing of slaughtermen during the war emergency is not affected as a result of the control of slaughtering by the Minister of Food (see *ante*, p. 268).

The Ministry of Health have prescribed the duties of butchers and slaughtermen, from the point of view of meat inspection (see *ante*, p. 241), as follows :—

Ministry of Health, Memo. 62/Foods—Meat Inspection—Memorandum on a System of Meat Inspection.

B—Duties of Butchers and Slaughtermen.

- (i) Evidence of disease in a carcase should not be modified or obliterated by washing, rubbing, stripping, or in any other manner, except under the direct supervision of the meat inspector and in accordance with his instructions.
- (ii) In no case either of "back bleeding," "over-sticking" or "sticking-in" should stripping of the serous membrane be permitted except by or under the direction of the meat inspector, and in any such case in which immediate stripping is necessary to preserve the marketability of the carcase the membrane should not be entirely detached from the carcase until it has been examined by the meat inspector and he has authorised the detachment.
- (iii) Notification of intention to slaughter animals *for emergency reasons* should be forwarded to the veterinary inspector, meat inspector or medical officer of health, and so far as practicable all such animals should be examined at the time of slaughter. If not so examined the carcase and the whole of the viscera should be detained until it has been examined by the meat inspector and a decision given.

In cases where such an animal is examined at the time of slaughter, the inspector may require the carcase and the whole of the viscera, unless obviously unfit for food, to be detained for 24 hours thereafter to enable a later inspection to be made.

All carcases of such animals as may subsequently be passed for human consumption should be ribbed or quartered before being released.

(d) Sect. 2, Slaughter of Animals (Scotland) Act, 1928.

- (iv) When any dead or moribund animal is admitted into a slaughterhouse, immediate notification of the fact to the veterinary inspector, meat inspector or the medical officer of health should be made by the owner or person in charge of the animal, and as soon as practicable after receipt of the notification an inspector should examine such carcase or animal.
- (v) Tuberculous carcasses or carcasses presenting lesions of other disease should not be wiped down with the ordinary wiping-cloth, and the cloth that has been used for such purpose should not again be used until it has been boiled for 15 minutes in water containing soda.
- (vi) Where the carcase has not been examined by the meat inspector at the time of slaughter, the whole of the viscera and offal should be kept, pending inspection, in such a way as to enable them to be identified, by labelling or otherwise, with the carcase from which they have been removed.

SPECIAL PROVISIONS WITH RESPECT TO KNACKERS' YARDS.

No person shall sell, or offer or expose for sale, for human consumption, any part of an animal which has been slaughtered in a knacker's yard, and any person convicted of so doing may have his licence, in respect either of a slaughterhouse or a knacker's yard, cancelled by the court in addition to any other penalty imposed(e).

A local authority are empowered to make byelaws requiring the licensed occupier of a knacker's yard to keep, and produce when required, records of animals brought into the yard, and of the manner in which those animals and the different parts thereof were disposed of(f).

Every person carrying on, or assisting to carry on, the trade of a knacker must comply with the following provisions of the First Schedule to the Protection of Animals Act, 1911(g).

First Schedule, Protection of Animals Act, 1911.

- 1—The name of the knacker, together with the word "knacker," shall be painted or affixed in a conspicuous manner over the door or gate of the knacker's yard.
- 2—The hair shall be cut from the neck of any horse, ass or mule directly the animal has been delivered to the knacker.
- 3—All animals shall be slaughtered, with as little suffering as possible, within two days from the time they have been delivered to the knacker. Any animal which is in pain shall be so slaughtered without delay.
- 4—All animals shall be properly fed and watered after they have been delivered to the knacker.

(e) Sect. 19, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 266 ; and see *ante*, p. 253.

(f) *Ibid*, sect. 59 ; 31 Halsbury's Statutes 289 ; and see *ante*, p. 268.

(g) 1 Halsbury's Statutes 381.

- 5—No animal shall be used or employed for any work after it has been delivered to the knacker.
- 6—The knacker shall enter in a book kept for the purpose such a full and correct description of the colour, marks and gender of every animal delivered to him as may clearly distinguish and identify the same, and the name and address of the owner thereof, and the book shall be produced by him before any justice of the peace upon the requirement of such justice, and the knacker shall allow such book to be inspected and extracts to be made therefrom at all reasonable times by any police constable or by any other person authorised by a justice of the peace.
- 7—No person who is under the age of sixteen years shall be admitted to, or permitted to remain in, the knacker's yard during the process of slaughtering or of cutting up the carcass of any animal.
- 8—No animal shall be killed in the sight of any other animal awaiting slaughter.
- 9—The knacker shall not sell or part with alive, or cause or procure or permit any person to sell or part with alive, any animal which has been delivered to him.

A constable has the right of entry to any knacker's yard for the purpose of examining whether there has been any contravention of the Protection of Animals Act, 1911(h).

HORSEFLESH.

The sale of horseflesh for human consumption is governed by section 38 of the Act of 1938, *infra*.

Section 38, Food and Drugs Act, 1938—Sign to be displayed on shops, etc., where horseflesh is sold for human consumption.

- (1) No person shall sell, or offer or expose for sale, or have in his possession for the purpose of sale, any horseflesh for human consumption elsewhere than in a shop, stall or place over or on which a notice in legible letters stating that horseflesh is sold there is displayed in a conspicuous position so as to be visible whenever horseflesh is being sold, or offered or exposed for sale.
- (2) No person shall supply horseflesh for human consumption to a purchaser who has not asked to be supplied with horseflesh, or who has asked to be supplied with some compound article of food not ordinarily made of horseflesh.
- (3) A person who contravenes any of the provisions of this section shall be guilty of an offence.
- (4) If any horseflesh is exposed for sale elsewhere than in a shop, stall or place distinguished as aforesaid without anything to show that it was not intended for sale for human consumption, the onus of proving that it was not so intended shall rest upon the person exposing it for sale.
- (5) In this section the expression "horseflesh" means the flesh of horses, asses and mules, and includes any such flesh whether cooked or uncooked and, whether alone, or accompanied by, or mixed with, any other substance, and the expression "flesh" includes any part of an animal.

(h) Sect. 5, Protection of Animals Act, 1911; 1 Halsbury's Statutes 376.

The provisions of sections 10 (with respect to the inspection and seizure of unsound food) and 9 (with respect to the penalty for the sale, etc., of unsound food) of the Act of 1938 (see *ante*, pp. 227 and 232) apply in the case of horseflesh intended for sale for human consumption.

It should be noted that whereas under the repealed Sale of Horseflesh, etc., Regulation Act, 1889(*i*), the notice had to consist of letters not less than four inches in length, section 38, *supra*, simply requires that a notice shall be displayed in a conspicuous position so as to be visible whenever horseflesh is being sold, or offered or exposed for sale.

Emergency provisions with respect to horseflesh.—In accordance with the Horseflesh (Control and Maximum Prices) Order, 1941(*k*), no person was permitted, after 2nd February, 1942(*l*), to sell, or expose for sale, any horseflesh (other than edible offals or bones)—

- (a) by wholesale, otherwise than in sides, fores or hinds ;
- (b) by retail, except in the form of boneless meat.

A person may not sell, etc., any horseflesh for human consumption in premises where meat other than horseflesh is sold or offered or exposed for sale for human consumption, or where horseflesh not for human consumption is sold or offered or exposed for sale(*m*). It is also an offence under the Order of 1941, *supra*, to manufacture or prepare for sale or sell, etc., for human consumption any meat paste, soup, meat roll or galantine, ready or prepared meal, sausage, meat pie or other meat product or compound article of food containing horseflesh(*n*), but the Minister of Food authorised the sale for the purpose of feeding animals only, subject to various conditions, of meat roll, galantine, or meat product containing horseflesh which was manufactured before 24th February, 1942, for human consumption, provided such product is labelled as sold for the purpose of feeding animals only (*o*).

All meat derived from horses slaughtered in Great Britain, not being meat which is fit for human consumption and from horses which have died as the result of illness or accidental injury, the meat of which is not fit for human consumption, must be coloured in the *prescribed manner* (see *ante*, p. 252), in accordance with article 6 of the Livestock (Restriction on Slaughtering) (No. 2) Order, 1940(*p*).

(*i*) 8 Halsbury's Statutes 860.

(*k*) S.R. and O., 1941, No. 1862.

(*l*) See S.R. and O., 1942, No. 107.

(*m*) Art. 5, Horseflesh (Control and Maximum Prices) Order, 1941 ; S.R. and O., 1941, No. 1862.

(*n*) *Ibid*, Art. 6.

(*o*) See S.R. and O., 1942, No. 874.

(*p*) S.R. and O., 1940, No. 1856, as amended by S.R. and O., 1941, No. 199.

CHAPTER 10.

MARINE, FRESHWATER AND SHELL FISH.

UN SOUND FISH.

The provisions of the Act of 1938, relative to unsound food, contained in Part I of the Act (*a*), apply to fish and shell-fish as they do to other foods, as to which see Chapter 8, *ante*, p. 225.

Although fish may be found to be suffering from specific diseases, the greater part of the fish found to be unfit for human consumption is dealt with on account of decomposition. There are no standard rules for the guidance of unsoundness in fish, similar to those contained in Memo. 62/Foods (see *ante*, p. 242) with regard to meat, but the following are the generally accepted signs of decomposition in fish :—

- 1—When rigor mortis has passed off ;
- 2—When there is a reddish discoloration along the backbone ;
- 3—When the smell is becoming tainted and passing on to the putrid stage ;
- 4—When the flesh strips readily and cleanly from the backbone ;
- 5—When the abdominal walls have a soft, pulpy, jelly-like appearance, with commencing discoloration and tainted odour ;
- 6—When the gills have lost their characteristic tint and are becoming grey and slimy ;
- 7—When the eyes are grey and shrunken.

The Minister of Health is empowered by section 8 of the Act of 1938 (see *ante*, p. 159) to make regulations, *inter alia*, for preventing danger to health from the importation, preparation, transport, storage, exposure for sale and delivery of food of various kinds intended for sale or sold for human consumption. Under these provisions regulations could be made dealing with fish, but the Minister has made none as yet.

Diseases of fish.—The Minister of Agriculture and Fisheries is empowered by the Diseases of Fish Act, 1937(*b*), to prohibit the importation of live fish of the family *Salmonidæ* and a licence is required for the importation of freshwater fish or of the eggs of salmon or freshwater fish(*c*). The Minister is also authorised to deal with infected(*d*) areas and to regulate the

(*a*) Sects. 9 to 12 ; 31 Halsbury's Statutes 258–260.

(*b*) 30 Halsbury's Statutes 313.

(*c*) *Ibid*, sect. 1 ; 30 Halsbury's Statutes 313.

(*d*) " *Infected* " means infected with furunculosis, or such other diseases as may be specified by Order made by the Minister of Agriculture and Fisheries—sects. 10(1) and 13, Diseases of Fish Act, 1937 ; 30 Halsbury's Statutes 319, 320.

transport of fish from such areas. He may give instructions regarding the disposal of dead or dying fish in the area.

Immature fish.—The following fish are regarded as immature and may not be sold :—

- Edible crabs*—
- (i) which measure less than $4\frac{1}{4}$ inches across the broadest part of the back ;
 - (ii) carrying any spawn attached to the tail or other exterior part of the crab, whether known as "berried crab," "seed crab" or "ran crab," or by any other name ;
 - (iii) which has recently cast its shell, whether known as "caster," "white crab," "white-footed crab," "white-livered crab," "soft crab," or by any other name(e).
- Lobsters*—
- which measure less than 8 inches from the top of the beak to the end of the tail, when spread as far as possible flat(e).

PRESERVATIVES IN FISH.

It should be noted that fish may not contain preservative of any description (see *ante*, p. 186), but the preparation of fish by any process of cooking is deemed to be the preservation thereof for the purposes of section 14 of the Act of 1938, which requires the registration of premises used in connection with the sale of preserved food (see Chapter 19, *post*, p. 465, with respect to food-preparing premises, and Chapter 18, *post*, p. 459, with respect to fried-fish shops).

SEA FISHERIES.

The following authorities are responsible for the administration of the law relating to inshore fisheries(f) :—

Sea-fisheries committees—

Northumberland Local Fisheries Committee ;
 North-Eastern Local Fisheries Committee ;
 Eastern Local Fisheries Committee ;
 Kent and Essex Local Fisheries Committee ;
 Sussex Local Fisheries Committee ;
 Southern Local Fisheries Committee ;
 Devon Local Fisheries Committee ;
 Cornwall Local Fisheries Committee ;
 South Wales Local Fisheries Committee ;
 Lancashire and Western Local Fisheries Committee ;
 Cumberland Local Fisheries Committee.

(e) Fisheries (Oyster, Crab and Lobster) Act, 1877 ; 8 Halsbury's Statutes 721.

(f) Fishing from smaller craft in territorial waters of England and Wales.

Fishery boards—

Tees Fishery Board ;
 Suffolk and Essex Fishery Board ;
 Frome Fishery Board ;
 Fowey Fishery Board ;
 Camel Fishery Board ;
 Taw and Torridge Fishery Board ;
 Teify Fishery Board ;
 Dee Fishery Board ;
 Kent, Bela, Winster, Leven and Duddon Fishery Board ;
 Conway Fishery Board.

Harbour boards—

Colchester Borough Council ;
 Southampton Harbour Board(*g*).

The Minister of Agriculture and Fisheries is empowered to make orders under the Sea Fisheries Regulation Act, 1888(*h*), as amended by the Sea Fish Industry Act, 1938(*i*), with respect to fishery districts. Such powers enable the Minister to—

- 1—make orders creating a sea-fisheries district comprising any part of the sea within which His Majesty's subjects have by international law, the exclusive right of fishing, either with or without any part of the adjoining coast of England and Wales ;
- 2—define the limits of the district ;
- 3—specify the area chargeable with any expenses under the Act ; and
- 4—provide for the constitution of a local fisheries committee for the regulation of sea fisheries carried on within the district.

Local fisheries committee.—A local fisheries committee may be a committee or a county council or county borough, or a joint committee consisting of members of such authorities. The committee may include other persons to represent interests other than those of the constituent local authorities. There must be at least one representative appointed by each Fishery Board having jurisdiction within the district of the local fisheries committee. Other persons acquainted with the fishing interests in the district may be appointed to the committee by the Minister of Agriculture and Fisheries, but the total number of the additional members, not appointed by the constituent local authorities, must not exceed the number so appointed(*k*).

The Minister is empowered to make an order creating a sea-fisheries district on the application of a county or borough

(*g*) See Title, *Sea Fisheries*, Macmillan's "*Local Government Law and Administration*," London, Butterworth & Co., Ltd., vol. 12, pp. 98 *et seq.*

(*h*) 8 Halsbury's Statutes 743.

(*i*) 31 Halsbury's Statutes 191.

(*k*) Sect. 1(2), Sea Fisheries Regulation Act, 1888 ; 8 Halsbury's Statutes 743 ; as amended by sect. 51, Sea Fish Industry Act, 1938 ; 31 Halsbury's Statutes 230.

council. The Minister may vary or revoke an order on the application of such a council or on the application of the local fisheries committee, provided that in the latter case he must consult with the appropriate local authority before varying or revoking an order(*l*).

Twenty ratepayers interested in sea fisheries may apply to a county or borough council for the formation of a sea-fisheries district, and if the council refuse or neglect to make an application to the Minister of Agriculture and Fisheries to make an Order creating such a district, the ratepayers concerned may themselves apply to the Minister, and in such circumstances the Minister must proceed as if the application had been made by the local authority(*m*).

The draft of every order creating a sea-fisheries district must be advertised locally by the Minister, and if there are any objections to the proposal, a public local inquiry must be held. The report of the person holding the inquiry must be laid with the Order before both Houses of Parliament(*n*) for a period of thirty days and either House may resolve that the Order or any part of it shall not have effect. If no such resolution is passed, the Order becomes operative at the expiration of the thirty days(*o*).

Where byelaws have been made under the Salmon and Freshwater Fisheries Act, 1923(*p*), the local fisheries committee has no jurisdiction within the area subject to such byelaws(*q*).

The *functions* of a local fisheries committee may be summarised as follows :—

1—*Power to make byelaws.*

- (a) Restricting or prohibiting any method of fishing for sea-fish or the use of any instrument for fishing(*r*) ;
- (b) Determining the size of mesh, form and dimensions of any fishing instrument used for sea-fish(*r*) ;
- (c) Restricting or prohibiting the fishing for, or taking of, such kinds of sea-fish as may be specified and during such period as may be laid down under a byelaw(*s*) ;
- (d) Constituting a district for oyster cultivation for the purpose of the Fisheries (Oyster, Crab and Lobster) Act, 1877, section 4(*t*) ;

(*l*) *Ibid*, sect. 1 ; 8 Halsbury's Statutes 743 ; as amended by sect. 57, *ibid* ; 31 Halsbury's Statutes 233.

(*m*) Sect. 1(5), Sea Fisheries Regulation Act, 1888 ; 8 Halsbury's Statutes 744.

(*n*) *Ibid*, sect. 1(6) ; 8 Halsbury's Statutes 744.

(*o*) *Ibid*, sect. 1(4) ; 8 Halsbury's Statutes 743.

(*p*) 8 Halsbury's Statutes 780 ; and see *post*, p. 295.

(*q*) Sect. 12(3), Sea Fisheries Regulation Act, 1888 ; 8 Halsbury's Statutes 748.

(*r*) *Ibid*, sect. 2(1) ; 8 Halsbury's Statutes 744.

(*s*) Sect. 7, Fisheries Act, 1891 ; 8 Halsbury's Statutes 752.

(*t*) 8 Halsbury's Statutes 721 ; Sect. 2(1)(b), Sea Fisheries Regulation Act, 1888 ; 8 Halsbury's Statutes 744.

- (e) Directing that the proviso to section 8 of the Act of 1877, *supra*, shall not apply. That proviso permits edible crabs of the kinds specified in section 8 to be taken up, or be in possession of, a person if such crabs are intended for bait for fishing(*u*) ;
- (f) Prohibiting or regulating the deposit or discharge of any solid or liquid substance detrimental to sea-fish or sea fishing(*v*) ; and
- (g) With respect to shellfish(*w*), for the following purposes :—
 - i—fixing the sizes and condition at which shellfish may not be removed and the method of determining such size ;
 - ii—imposing an obligation to redeposit in specified localities any shellfish, the removal or possession of which is prohibited under any Act of Parliament ;
 - iii—protecting shellfish laid down for breeding purposes ;
 - iv—protecting culch and other material for the reception of spat, otherwise known as the spawn or young, of any kinds of shellfish ; and
 - v—imposing an obligation to redeposit such culch and other material in specified localities.

The expression “ sea-fish ” means fish of all kinds found in the sea and includes lobsters, crabs, shrimps, prawns, oysters, mussels, cockles and other kinds of crustaceans and shellfish(*x*). Whilst it includes all molluscs and crustaceans(*y*), it does not include fish of the salmon species or migratory trout(*z*).

2—Power to stock or restock a public fishery for shellfish, provided that the expenditure must be approved by the Ministry of Agriculture and Fisheries(*a*) ;

3—With the approval of the Minister of Agriculture and Fisheries and subject to such conditions as he may impose, to incur expenditure for the destruction of fishery pests so far as the destruction of such pests appears to the committee to be desirable for the preservation and improvement of the fisheries within its district and if it is not illegal under any other Act(*b*) ;

4—To contribute to the cost of works of maintenance or improvement of small harbours(*c*) situate wholly or partly within the committee's district, provided such harbours are, in the opinion of the Minister of Agriculture and Fisheries, principally used by persons engaged in the sea-fishing industry(*b*) ; and

(*u*) Sea Fisheries Regulation Act, 1888, sect. 2(1)(c) ; 8 Halsbury's Statutes 744.

(*v*) *Ibid*, sect. 2(1)(e) ; 8 Halsbury's Statutes 745.

(*w*) Sect. 1(1), Sea Fisheries (Shellfish) Regulation Act, 1894 ; *ibid*, 770.

(*x*) Sect. 14, Sea Fisheries Regulation Act, 1888 ; 8 Halsbury's Statutes 749.

(*y*) Sect. 1(3), Sea Fisheries (Shellfish) Regulation Act, 1894 ; 8 Halsbury's Statutes 771.

(*z*) Sect. 14, Sea Fisheries Regulation Act, 1888 ; as amended by sect. 52, Sea Fish Industry Act, 1938 ; 31 Halsbury's Statutes 231.

(*a*) Sect. 1(2), Sea Fisheries (Shellfish) Regulation Act, 1894 ; 8 Halsbury's Statutes 771.

(*b*) Sect. 56, Sea Fish Industry Act, 1938 ; 31 Halsbury's Statutes 233.

(*c*) “ Harbour ” includes any haven, cove or other landing-place, and “ works ” includes skipway, capstan and other works facilitating the landing, launching or beaching of vessels in any harbour—sect. 2(4), Fishery Harbours Act, 1915 ; 18 Halsbury's Statutes 583.

5—Where duly authorised a committee may institute proceedings for any offences under the Oil in Navigable Waters Act, 1922, which makes provision against the discharge or escape of oil into navigable waters. By a general direction issued by the Minister of Agriculture and Fisheries(*d*), committees were authorised under section 7 (4) of the Act of 1922(*e*) to institute proceedings for offences under the Act(*b*).

The Minister of Agriculture and Fisheries is empowered to require local fisheries committees to collect such statistics relating to sea fisheries and make such returns as to their proceedings, as he may reasonably require(*f*).

As to the procedure for the making of byelaws relating to sea fisheries, see the title *Sea Fisheries* in Macmillan's "*Local Government Law and Administration*"(*g*).

The *penalties* for infringements of byelaws of a local fisheries committee are contained in the Sea Fish Industry Act, 1938(*h*).

A local fisheries committee may appoint *fishery officers* for the purpose of enforcing the byelaws, subject to any restrictions or conditions as to expenditure which may be made by the constituent local authorities(*i*). A fishery officer may stop and search any vessel or vehicle used in fishing or for conveying fish or any substances, the deposit or discharge of which is subject to a prohibition or regulation under the byelaws, within the limits of the committee's area. He may also search and examine instruments used in catching or carrying fish and seize any sea-fish or instrument taken or used in contravention of the byelaws(*k*). A fishery officer has the same powers and privileges and is subject to the same liabilities as a constable, for the purposes of the enforcement of the byelaws(*l*). A justice may issue a search warrant to a fishery officer, enabling him to enter premises, but the warrant remains in force for one week only(*m*).

Where an order has been made with respect to the limits of size of fish(*n*) a fishery officer may, at all reasonable times, go on board any fishing boat or enter premises used in connection with the business of the treatment, storage or sale of sea-fish and may search for and examine any sea-fish in any such ship or place. He may seize any sea-fish landed, sold or

(*d*) S.R. and O., 1938, No. 1321.

(*e*) 18 Halsbury's Statutes 807.

(*b*) See footnote, p. 288.

(*f*) Sect. 8, Sea Fisheries Regulation Act, 1888 ; 8 Halsbury's Statutes 747.

(*g*) London, Butterworth & Co., Ltd., vol. 12, p. 106.

(*h*) Sects. 53 and 54 ; 31 Halsbury's Statutes 231, 232.

(*i*) Sect. 6(1), Sea Fisheries Regulation Act, 1888 ; 8 Halsbury's Statutes

746.

(*k*) *Ibid*, sect. 6(2) ; 8 Halsbury's Statutes 746.

(*l*) *Ibid*, sect. 6(4) ; 8 Halsbury's Statutes 746.

(*m*) *Ibid*, sect. 7 ; 8 Halsbury's Statutes 747.

(*n*) See sect. 4, Sea-Fishing Industry Act, 1933, as amended by sect. 38, Sea Fish Industry Act, 1938 ; 31 Halsbury's Statutes 221.

exposed or offered for sale by any person in contravention of the statutory provisions or which any person has in his possession(o).

Local authorities other than local fisheries committees.—

A local authority, other than a local fisheries committee, may contribute towards the expenses of a harbour authority incurred for the purpose of improving, managing or maintaining small harbours principally used by the fishing industry(p).

A local authority may also contribute towards the provision of means for the cleansing of shellfish(q).

Local authorities, other than county councils, may make orders prohibiting in certain circumstances the distribution of shellfish for sale for human consumption, if they are satisfied that it is necessary to do so in the interests of public health(r).

The council of a county or borough may contribute towards the expenses of a board of salmon conservators in the exercise of its powers under the Sea Fisheries Regulation Act, 1888(s).

Emergency provisions.—During the war emergency various Defence Regulations were put into force enabling the Minister of Agriculture and Fisheries to control fisheries, with the suspension of the various powers detailed previously with respect to fisheries—as to which see the title, *Fisheries*, Macmillan's "*Local Government Law and Administration*," Emergency Legislation Volume, Fifth Edition, 1945, p. 186.

FRESHWATER FISHERIES.

The Minister of Agriculture and Fisheries exercises general control over the freshwater fisheries in England and Wales(t). Locally control is exercised through fishery boards appointed in accordance with the Salmon and Freshwater Fisheries Act, 1923(u). The expression "freshwater fish" means any fish living in fresh water exclusive of salmon and trout and of any kinds of fish which migrate to and from tidal waters and of eels and fry of eels(v), but sections 37 and 38 of the Act of

(o) Sect. 4(6), Sea-Fishing Industry Act, 1933, substituted by sect. 38 Sea Fish Industry Act, 1938; 31 Halsbury's Statutes 221.

(p) Sect. 3, Fishery Harbours Act, 1915; 18 Halsbury's Statutes 584 as amended by Local Government Act, 1933, Part VIII and Sched. XI Part IV; 26 Halsbury's Statutes 404 *et seq.*; 519.

(q) Sect. 39, Food and Drugs Act, 1938; 31 Halsbury's Statutes 279 and see *post*, p. 299.

(r) Public Health (Shellfish) Regulations, 1934; S.R. and O., 1934, No. 1342; and see *post*, p. 300.

(s) Sect. 10, Fisheries Act, 1891; 8 Halsbury's Statutes 752.

(t) Sect. 1, Ministry of Agriculture and Fisheries Act, 1919; 3 Halsbury's Statutes 451.

(u) 8 Halsbury's Statutes 780.

(v) Sect. 92, Salmon and Freshwater Fisheries Act, 1923; 8 Halsbury's Statutes 833.

1923 (relating to fishery districts and fishery boards) have been extended to eel or elver fisheries(*w*).

The Salmon and Freshwater Fisheries Act, 1923, is the principal Act dealing with this subject, and is divided into parts as follows :—

- Part 1—Prohibition of certain modes of taking and destroying fish ;
- Part 2—Obstructions to passage of fish ;
- Part 3—Time of fishing and selling, and exporting fish ;
- Part 4—Fishery districts and fishery boards ;
- Part 5—Provisions as to fishery boards ;
- Part 6—Byelaws ;
- Part 7—Licences ;
- Part 8—Powers of inspectors, water bailiffs and others ;
- Part 9—Legal procedure and evidence ; and
- Part 10—Local and supplemental.

Close season for freshwater fish.—The annual close season for freshwater fish is between 14th March and 16th June, or, if in relation to any waters a different period is substituted by byelaws made under the Act of 1923 or by any authority having a statutory power to make byelaws for the purpose, that substituted period(*x*).

Fishery districts.—With a view to the maintenance, improvement and development of the salmon fisheries, trout fisheries or freshwater fisheries within any area, the Minister of Agriculture and Fisheries may, upon application being made to him, make an order constituting a fishery district for the regulation of any such fisheries(*y*). Such an application may be made by—

- 1—a fishery board constituted under the Act of 1923 or any Act repealed by that Act ; or
- 2—a county council ; or
- 3—a county borough council or the council of a borough which is the county of a city or county of a town, where the population according to the 1881 census was at least 10,000(*z*) ;
- 4—owners of a quarter at least in value of the several fisheries proposed to be regulated or constitute a majority of the persons holding licences to fish in public waters within the area of the proposed order ; or
- 5—by any association of persons which in the opinion of the Minister is sufficiently representative of fishing interests within the area(*a*).

Section 38 of the Salmon and Freshwater Fisheries Act, 1923, *infra*, details the contents of an order made by the

(*w*) Salmon and Freshwater Fisheries Act, 1935 ; 28 Halsbury's Statutes 74.

(*x*) Sect. 35(2), Salmon and Freshwater Fisheries Act, 1923 ; 8 Halsbury's Statutes 800.

(*y*) *Ibid*, sect. 37 ; 8 Halsbury's Statutes 801.

(*z*) *Ibid*, sect. 88 ; 8 Halsbury's Statutes 831.

(*a*) *Ibid*, sect. 39 ; 8 Halsbury's Statutes 803.

Minister of Agriculture and Fisheries establishing a fishery district and fishery board.

Section 38, Salmon and Freshwater Fisheries Act, 1923.—Contents of the order.

(1) An order under this Part of this Act may provide for—

- (a) defining the area of the fishery district within which the order is to apply ;
- (b) the constitution and incorporation of a fishery board ;
- (c) excepting from the application to a fishery board so constituted, and an area so defined, any of the provisions of this Act with respect to fishery boards and fishery districts, or modifying in their application to such a board or area any of those provisions ;
- (d) the imposition, collection, and recovery by a fishery board of contributions to be assessed on several fisheries regulated by the order or on the owners or occupiers thereof ;
- (e) enabling the fishery board with the approval of the Minister to erect and work by themselves or their lessees any fixed engine for catching salmon or migratory trout within the area, and for that purpose to purchase or take on lease any fishery land or foreshore specified in the order together with any easement over any adjoining land necessary for securing access to the fishery land or foreshore so acquired :

Provided that any such order—

- (i) shall not authorise any such fixed engine to be worked for a period exceeding five years unless the authority is from time to time extended by licence of the Minister for such term as may be specified in the licence and not exceeding at any one time five years, and the Minister shall not grant any such licence until he has inquired into the effect of the working of the engine on the salmon or trout fisheries within the area ; and
- (ii) shall provide that all rents and profits of the fixed engine authorised by the order to be worked by the fishery board shall be appropriated for the purpose of such measures for the maintenance, improvement, or development of the fisheries in the area as may be approved by the Minister ;
- (f) modifying in relation to the fisheries within the area any of the provisions of this Act which relate to the regulation of fisheries, or of any local Act relating to any fishery within the area ;
- (g) abolishing any fishery board established within the area under this Act or under any Act repealed by this Act, and transferring their property and liabilities to the fishery board constituted by the order, and making such adjustments between the two bodies as may appear to the Minister to be necessary or expedient ;
- (h) altering the area of a fishery district or the constitution of any fishery board established under this Act or under any Act repealed by this Act, and conferring on any fishery board so established any powers which can be conferred on a fishery board established by an order made under this Part of this Act ;

- (i) the payment out of any funds in the hands of the fishery board constituted by the order of the costs of the applicants in obtaining the order, and, where the order requires confirmation by Parliament, the costs of obtaining such confirmation ;
 - (j) amending or revoking any previous order made under this Act or any Act repealed by this Act ;
 - (k) the general regulation of the fisheries within the area, and may contain any incidental, consequential or supplemental provisions, including provisions for payment of compensation to persons injuriously affected by the order, which may appear to be necessary or proper for the purposes of the order.
- (2) For the purpose of the acquisition of any fishery, land or foreshore or any easements necessary for giving access thereto authorised to be taken compulsorily under any such order, the provisions of the Lands Clauses Acts which relate to the purchase and taking of lands otherwise than by agreement, and to the entry upon lands by the promoters of the undertaking, are, subject to the modifications set out in the Second Schedule to this Act, incorporated with this Act.
- (3) An order under this Part of this Act shall not apply to any waters in which the business of artificially propagating or rearing salmon or trout is carried on under a licence granted by the Minister, and any such licence may be granted by the Minister, subject to such conditions (if any) as he thinks fit, and may be revoked if the Minister is of opinion that any condition has not been observed.

The procedure for making an order is prescribed in section 40, *infra*.

Section 40, Salmon and Freshwater Fisheries Act, 1923.—Procedure for making order.

- (1) Before making an order the Minister shall cause notice of the intention to make the order and of the place where copies of the draft order may be inspected and obtained, and of the time within and the manner in which objections to the draft order may be made, to be published in the " London Gazette " and in such other manner as he thinks best adapted for informing persons affected, and shall also, where the order contains a power to acquire compulsorily any fishery, land or foreshore or any easement over adjoining lands, cause notice to be given to owners, lessees and occupiers of the fishery, land or foreshore affected in manner provided by rules made by the Minister.
- (2) Before making an order the Minister shall consider any objections which may be duly made to the draft order and may in any case cause a public local inquiry to be held with respect to any objections to the draft order.
- (3) After an order has been settled and made by the Minister it shall be published in such a manner as he thinks best adapted for informing persons affected with notice that the Minister has settled the order, and that the order will become final and have effect as an Act of Parliament unless within such period, not being less than thirty days as may be stated in the notice, a memorial is presented to the Minister by a fishery board, local authority, or other person or association affected by the order, praying that the order shall not become law without confirmation by Parliament.

- (4) If within such period, not being less than thirty days, as may be stated in the notice so published as aforesaid, no memorial against the order is presented to the Minister by any fishery board, local authority or other person or association affected thereby, or if every such memorial so presented is withdrawn, the Minister may confirm the order, and the order shall thereupon have effect as if enacted in this Act, but, if any such memorial is presented and is not withdrawn, the order shall be provisional only and shall not have effect unless or until confirmed by Parliament.
- (5) The making and confirmation of an order shall be *prima facie* evidence that all requirements of this Act in respect of proceedings required to be taken previously to the making and confirmation of such order have respectively been complied with.
- (6) The Minister may make regulations in relation to the publication of notices and advertisements under this section and to the holding of and procedure at public local inquiries under this section, and the payment of expenses of and incidental to such inquiries and to any other matters of procedure respecting the making of orders under this section.

Fishery boards.—Fishery boards are composed of—

- (a) *appointed members*—appointed in accordance with section 46 of the Act of 1923; and
- (b) *representative members of net fishermen*—appointed in accordance with section 49 of the Act of 1923;
- (c) *representative members of rod fishermen for fish other than salmon*—appointed in accordance with section 48 of the Act of 1923; and
- (d) *ex-officio members*—as defined in section 50 of the Act of 1923(b).

Where a fishery district lies wholly within one county (or county borough or borough as defined previously (see *ante*, p. 286)), the council of the county must appoint not more than five persons to be members of the fishery board. In cases where the fishery district does not lie wholly within one county, etc., the council of each county must appoint not more than three persons to act as members of the board. Members so elected hold office for one year but are eligible for re-election(c).

The general powers of a fishery board are contained in section 54 of the Act of 1923, *infra*.

Section 54, Salmon and Freshwater Fisheries Act, 1923.—General powers of board.

- (1) A fishery board shall have, in addition to any other powers given to them by this Act or by the order constituting the board, power within their district to do any of the following things; that is to say,—
 - (a) to appoint by writing under the hand of the chairman of the board a clerk and a sufficient number of water bailiffs and other officers, to assign to them their salaries and duties, and to remove any clerk, water bailiff or officer so appointed;

(b) Sect. 45, Salmon and Freshwater Fisheries Act, 1923; 8 Halsbury's Statutes 806.

(c) *Ibid*, sect. 46; 8 Halsbury's Statutes 806.

- (b) to take legal proceedings in respect of any offence against this Act, or for the enforcement of any provision of this Act or for the protection of the fisheries in their district from injury by pollution or otherwise ;
 - (c) to expend any moneys in their hands in any manner which they think most conducive to the maintenance, improvement or development of the fisheries within their district ;
 - (d) to purchase or lease by agreement any fishery, fishing rights, or any establishment for the artificial propagation or rearing of salmon, trout or freshwater fish, and to use, work, or exercise the same by themselves, their lessees, or any person duly authorised by them in writing ; and
 - (e) generally to execute such works, do such acts, and incur such expenses as they deem expedient for the said purposes.
- (2) It shall not be lawful for a fishery board to pay to any member of the board any salary, fees, or other remuneration for his acting in any way as a member of or under the board.
- (3) This section—
- (a) shall not prevent a fishery board from obtaining the services of additional constables under section nineteen of the County Police Act, 1840, for the purpose of carrying out the provisions of this Act ; and any additional constables so appointed shall have all the powers and privileges of water bailiffs, and shall be paid for their services by the board ;
 - (b) shall not authorise anything to be done which may injuriously affect any navigable river, canal, or inland navigation ;
 - (c) shall not prevent a fishery board from paying to any member of the board any compensation, purchase money, or rent in respect of any land, dam, fishery, fishing weir, fishing mill dam, fixed engine, or other obstruction, if the member does not vote in respect of the payment of such compensation to himself.

A fishery board may also take proceedings under the Rivers Pollution Prevention Acts, 1876 and 1893^(d) to prevent pollution of the waters within their district^(e).

A fishery board may make byelaws for any of the following purposes :—

- (1) (a) To fix or alter the annual close season for salmon so that such close season is not less than one hundred and fifty-three days and does not commence later than the first day of September in each year ;
- (b) To fix or alter the close season for fishing for salmon with rod and line so that such close season is not less than ninety-two days, and does not commence later than the first day of November in each year ;
- (c) To fix or alter the weekly close time for salmon so that such time is not less than forty-two nor more than seventy-two hours ;

^(d) See the author's "*Sanitary Administration*," Second Edition, 1944, London, Butterworth & Co., Ltd., Chapter 12, p. 282.

^(e) Sect. 55, Salmon and Freshwater Fisheries Act, 1923 ; 8 Halsbury's Statutes 812.

- (d) To fix or alter the annual close season for trout so that such annual close season is not less than one hundred and eighty-one days and does not commence later than the first day of September in each year, or to fix or alter the annual trout close season for rod and line so that such close season is not less than one hundred and fifty-three days and does not commence later than the first day of October in each year, or as regards migratory trout, not later than the first day of November in each year, or to fix or alter the weekly close time for trout so that such time is not less than forty-two or more than seventy-two hours ;
- (e) To fix or alter the annual close season for freshwater fish so that such annual close season is not less than ninety-three days ;
- (f) To determine the nets and other instruments (not being fixed engines) which may be used for taking salmon, trout and freshwater fish, the dimensions, size of mesh and descriptions thereof, the manner of using them and the conditions under which they may be used ;
- (g) To require or regulate the attachment to licensed nets and instruments of marks, labels or numbers, or the painting thereof upon, or the affixing thereof to, boats, coracles or other vessels used in fishing ;
- (h) To prohibit the carrying in any boat or vessel whilst being used in fishing for salmon or trout of any net which is not licensed and has not attached thereto the mark, label or number prescribed by byelaws of the fishery board ;
- (i) To prohibit or regulate the carrying in a boat or vessel during the annual close season for salmon of a net capable of taking salmon other than a net commonly used in the district for sea-fishing if carried in a boat or vessel commonly used for that purpose ;
- (j) To prohibit the use for taking salmon, trout or freshwater fish of any instrument not being a fixed engine in such waters within any fishery district and at such times as may be prescribed by the byelaw ;
- (k) To prohibit the taking or removal from any waters without lawful authority of any live fish or any dead fish ;
- (l) To determine for the purposes of this Act, the period of the year during which gratings need not be maintained ;
- (m) To prohibit or regulate the taking of trout or any freshwater fish of a size less than such as may be prescribed by the byelaw ;
- (n) To prohibit or regulate the taking of fish by any means within such distance as is specified in the byelaw above or below any dam or any other obstruction whether artificial or natural ;
- (o) To prohibit or regulate fishing with rod and line between the expiration of the first hour after sunset on any day and the beginning of the last hour after sunrise on the following morning ;
- (p) To regulate the deposit or discharge in any waters containing fish of any liquid or solid matter specified therein detrimental to salmon, trout or freshwater fish, or the spawn or food of fish, but not so as to prejudice any powers of a sanitary or other local authority to

discharge sewage in pursuance of any power given by a Public General or Local Act or by a Provisional Order confirmed by Parliament ;

- (q) To require returns of salmon and trout taken within the district to be made to the fishery board by the person by whom the salmon and trout are taken ;
 - (r) To regulate the use in connection with fishing with rod and line of any lure or bait specified in the byelaw ;
 - (s) To determine the time during which it shall be lawful to use a gaff in connection with fishing by a rod and line for salmon or migratory trout ;
 - (t) To authorise the fishing with rod and line for eels during the annual close season for freshwater fish ;
 - (u) Generally for the better execution of this Act, and for the better protection, preservation and improvement of the fisheries in the district.
- (2) Any byelaw may be made to apply to the whole or any part or parts of the district, or to the whole or any part or parts of the year.
 - (3) If any person contravenes or fails to comply with the provisions of any byelaw, he shall be guilty of an offence against this Act.
 - (4) If at any time before the expiration of twelve months after the confirmation of any byelaw made by a fishery board under paragraph (f) or (j) of subsection (1) of this section, the owner or occupier of any fishery within the fishery district, by notice in writing to the clerk of the fishery board, claims that the fishery is injuriously affected by the byelaw, the claim and the amount of compensation to be paid, by way of annual payment or otherwise, for the damage (if any) to such fishery shall be determined, in default of agreement, by a single arbitrator appointed by the Minister :

Provided that, when the compensation is payable under any award by way of an annual payment, the fishery board or the person entitled to the annual payment may, at any time after the expiration of five years from the date of the award, require the award to be reviewed by an arbitrator appointed as aforesaid, and the compensation to be thenceforth paid shall be such as may be determined by that arbitrator(f).

The procedure, with respect to the making, confirmation and publication of byelaws under the Act of 1923, is contained in section 60(g).

SALMON AND TROUT FISHERIES.

The expression " freshwater fish " (see *ante*, p. 290) does not include salmon and trout. The expression " salmon " means all fish of the salmon species, and " trout " means any fish of the salmon family commonly known as trout and includes " migratory trout " which is defined as meaning trout which migrate to and from the sea(h).

(f) Sect. 59, Salmon and Freshwater Fisheries Act, 1923 ; 8 Halsbury's Statutes 814.

(g) 8 Halsbury's Statutes 817.

(h) Sect. 92, Salmon and Freshwater Fisheries Act, 1923 ; *ibid*, 833.

Salmon.—It is an offence to fish for, take, kill or attempt to take or kill salmon (except with a rod and line or putts and putchers) during the annual close season, or to do so with rod and line during the close season for rods, or to do so during the close season for putts and putchers(*i*).

The *annual close season* for salmon is as follows :—

- (a) such season as defined by byelaws made under the Act of 1923 or any other Act ; or
- (b) if there are no such byelaws, the period between the 31st of August to the 1st of February following.

The *close season for rods* is as follows :—

- (a) such season as defined by byelaws made under the Act of 1923 or any other Act ; or
- (b) if there are no such byelaws, the period between the 31st of October to the 1st of February following.

The *close season for putts and putchers* is the

period between the commencement of the annual close season and the 1st day of May following(*k*).

It is also an offence to fish for, take, kill, or attempt to take or kill salmon (except with a rod and line, or putts and putchers) during the weekly close time which, unless fixed by byelaws, is the period between 6 a.m. on Saturday and 6 a.m. on the following Monday(*l*). There is no weekly close time for the use of rods and lines, and putts and putchers, and if the weekly close time is fixed by byelaws such period must not be less than forty-two nor more than seventy-two hours(*m*).

Trout.—It is an offence to fish for, take, kill or attempt to take or kill trout—

- (a) except with a rod and line, during the annual close season, which is the period fixed by byelaws or where there are no such byelaws, the period between the 31st August to the 1st March following ; or
- (b) with a rod and line during the annual trout close season for rod and line, which is the period fixed by byelaws or where there are no such byelaws, the period between the 30th September and the 1st March following ; or
- (c) except with a rod and line, during the weekly close time for trout, which is the period fixed by byelaws or where there are no such byelaws, the period between 6 a.m. on Saturday and 6 a.m. on the following Monday(*n*).

The various close seasons do not apply to rainbow trout(*o*).

Consignment of salmon or trout.—It is an offence to send or consign in a package, salmon or trout unless the package is

(*i*) Sect. 26(1), Salmon and Freshwater Fisheries Act, 1923 ; 8 Halsbury's Statutes 795.

(*k*) *Ibid*, sect. 26(3) (4) (5).

(*l*) *Ibid*, sect. 27.

(*m*) *Ibid*, sect. 59(1)(c) ; 8 Halsbury's Statutes 814.

(*n*) *Ibid*, sect. 31 ; 8 Halsbury's Statutes 797.

(*o*) *Ibid*, sect. 31(7) ; 8 Halsbury's Statutes 797.

conspicuously marked on the outside with the word "salmon" or "trout" as the case may be(*p*). Any officer of a fishery board, market authority, appointed for the purpose by the Minister of Agriculture and Fisheries, or the Fishmongers Company, or a police officer may open any package so consigned and suspected to contain salmon or trout which is not marked.

Marking of imported salmon and sea-trout.—Imported frozen and chilled salmon(*q*) and sea-trout(*r*) must be marked with the indication of origin(*s*) (see *post*, p. 350).

SHELLFISH.

Contaminated shellfish.—In order that shellfish which are liable to become contaminated by pathogenic organisms (*e.g.* typhoid bacillus) as a result of contact with sewage, may be cleansed, section 39 of the Act of 1938, *infra*, enables a county council or a local authority to provide facilities for the purpose.

Section 39, Food and Drugs Act, 1938.—Provision of means for cleansing shellfish.

- (1) A county council or a local authority may provide, whether within or without their county or district, tanks or other apparatus for cleansing shellfish and may make charges in respect of the use of any tank or other apparatus so provided.
- (2) A county council or a local authority may contribute towards the expenses incurred under this section by any other council or any joint committee, or towards expenses incurred by any other person in providing, and making available to the public, means for cleansing shellfish.
- (3) Any expenses incurred by a county council under this section shall, if the Minister by order so directs, be defrayed as expenses for special county purposes chargeable upon such part of the county as may be provided by the order, but any such order may be revoked or varied by a subsequent order.
- (4) In London, a local authority may, with the consent of the Minister, borrow for the purposes of this section as if they were purposes of the Public Health (London) Act, 1936.
- (5) In this section the expression "cleansing shellfish" includes the subjection of shellfish to any germicidal treatment.
- (6) Nothing in this section shall authorise the establishment of any tank or other apparatus, or the execution of any other work, on, over or under tidal lands below high-water mark of ordinary spring tides, except in accordance with such plans and sections, and subject to such restrictions and conditions as may, before the work is commenced, be approved by the Board of Trade under the hand of one of the secretaries, under-secretaries or assistant secretaries of the Board.

(*p*) *Ibid*, sect. 34(1) ; 8 Halsbury's Statutes 799.

(*q*) "Salmon" means all fish of the species *Salmo salar*, and of the genus *Oncorhynchus* ; S.R. and O., 1931, No. 554, Art. 1.

(*r*) "Sea-trout" includes sea-trout and salmon-trout and all fish sold or exposed for sale or offered for sale as trout, sea-trout or salmon-trout ; *ibid*.

(*s*) Merchandise Marks (Imported Goods) No. 8 Order, 1931 ; S.R. and O., 1931, No. 554.

Regulations governing the cleansing of shellfish were made under the provisions of the Public Health Act, 1896^(t), as extended by the Public Health (Regulations as to Food) Act, 1907^(u), and by the Public Health (Cleansing of Shellfish) Act, 1932^(v), the two latter Acts being repealed by the Act of 1938. In accordance with the provisions of section 101 of the Act of 1938 (see *ante*, p. 160), the Public Health (Shellfish) Regulations, 1934^(w), are continued in force as if they had been made under the Act of 1938. The provisions of the Regulations of 1934, *supra*, are as follows :—

Article 2 defines "layings" as any place where shellfish are taken or deposited. The expression "*local authority*" means a port health authority, the common council of the City of London, the council of a metropolitan borough and the council of an urban or rural sanitary district.

Article 3 requires the medical officer of health to ascertain the layings from which any shellfish are derived if it appears that disease (infectious or not) has been conveyed or is likely to be caused by such shellfish, and to report to the local authority. The authority may require fishmongers to supply particulars as to the origin of any consignments of shellfish received during the past six weeks.

If the layings are situated outside the district of the local authority, *Article 4* requires the information to be forwarded to the appropriate authority, whose medical officer of health must investigate the suspected layings, submit reports, including bacteriological reports, to the council.

Article 5 enables a local authority, if satisfied that there is danger to the public health, to prohibit the sale of shellfish from the layings in question, unless the shellfish are cleansed, relaid or sterilised by an approved process. Before making the order the local authority must issue at least twenty-one days' notice and reasonable opportunities must be given to interested persons to make representations to the local authority. In the case of public layings, the notice must be in the form of posters, etc., and in the case of private layings, the notice must be sent to every owner or tenant. Copies of any notices issued must be sent to the local sea fisheries committee.

Article 6 requires that notice of the order must be published in the local press and served on every owner or tenant of a private laying, and warning notices posted in respect of public layings.

Article 7 requires notice of the order to be given to the Minister of Agriculture and Fisheries and to the Minister of Health. Any person aggrieved by the making of an order is empowered by *Article 9* to appeal to the Minister of Health within a period of 14 days.

Article 8 requires the authority in whose area the layings are situated to inform the local authority who made the original investigation, as to the steps being taken to deal with the matter, and if the latter authority are dissatisfied with the action taken, they may appeal to the Minister of Health.

(*t*) Sect. 1 ; 13 Halsbury's Statutes 871 ; repealed by the Public Health Act, 1936.

(*u*) 8 Halsbury's Statutes 862.

(*v*) 25 Halsbury's Statutes 468.

(*w*) S.R. and O., 1934, No. 1342.

Article 10 requires a local authority to revoke or vary an order as soon as they are satisfied that danger to health no longer exists. The Minister of Health and the Minister of Agriculture and Fisheries must be informed of the reasons for the variations or revocation of the order.

Close season for shellfish.—The following are the close seasons for shellfish :—

- | | | | |
|------------------------------|----|----|-----------------------------|
| 1— <i>Oysters</i> (native) | .. | .. | 14th May to 4th August(x). |
| 2— <i>Oysters</i> (deep sea) | .. | .. | 15th June to 4th August(x). |

PROTECTION OF WATERS CONTAINING FISH.

It is an offence under section 8 of the Salmon and Freshwater Fisheries Act, 1923, *infra*, to put, etc., into water containing fish, any liquid or solid matter to such an extent as to cause the waters to be poisonous or injurious to fish or the spawning grounds, spawn or food of fish. It should be observed, however, that the notice required to be given in accordance with subsection (2), does not apply to work carried out by a sanitary or other local authority in pursuance of any power given by an Act of Parliament or a confirmed Provisional Order.

Section 8, Salmon and Freshwater Fisheries Act, 1923.—Protection of waters containing fish from poisonous matter and trade effluents.

- (1) No person shall cause or knowingly permit to flow, or put or knowingly permit to be put, into any waters containing fish, or into any tributaries thereof, any liquid or solid matter to such an extent as to cause the waters to be poisonous or injurious to fish or the spawning grounds, spawn or food of fish, and if any person contravenes this subsection he shall be guilty of an offence against this Act :

Provided that—

- (a) a person shall not be so liable to any penalty for any act done in the exercise of any right to which he is by law entitled or in continuation of a method in use in connection with the same premises prior to the passing of this Act, if he proves to the satisfaction of the court before whom he is charged that he has used the best practicable means, within a reasonable cost, to prevent such matter from doing injury to fish or to the spawning grounds, spawn or food of fish ;
 - (b) nothing in this subsection shall prevent any person from acquiring a legal right in cases where he would have acquired it if this Act had not passed, or exempt any person from any penalty to which he would otherwise be subject, or make lawful any act or default which would but for this Act be a nuisance or otherwise contrary to law.
- (2) No person shall, within a fishery district, discharge any trade effluent into any waters containing fish, by means of any new work unless such notice of the proposed construction of the

new work has been given to the fishery board or to the Minister as is prescribed by this section, and, if he does so, he shall be guilty of an offence against this Act: Provided that the fishery board or the Minister may at any time exempt any new work from the operation of this subsection as from the date of the exemption or any earlier date notwithstanding that the provisions of this section as to notice have not been complied with.

Notice of the proposed construction of a new work shall be given to the fishery board or to the Minister—

- (a) where under any Act or byelaw notice thereof or an application for the approval thereof is required to be given or made to a local authority, then at the same time as such notice or application is given or made; and
- (b) in any other case not less than three months before the commencement of the work,

and a notice, if not accompanied by plans and specifications of the proposed new work, shall state where such plans and specifications can be inspected at all reasonable times by an officer of the fishery board or of the Ministry, as the case may be.

The expression "new work" means any work constructed after the commencement of this Act or any alteration after such date of any then existing work.

This subsection shall not apply to any work constructed by any sanitary or other local authority in pursuance of any power given by a Public General or Local Act or by a Provisional Order confirmed by Parliament.

Emergency provisions.—During the war emergency the Minister of Agriculture and Fisheries is empowered to suspend the operation of section 8, *supra*, where the work required is considered essential for the defence of the realm or the efficient prosecution of the war or to be essential to the life of the community(y).

It is also an offence under section 9 of the Salmon and Freshwater Fisheries Act, 1923, *infra*, to use dynamite or noxious substances for the destruction of fish.

Section 9, Salmon and Freshwater Fisheries Act, 1923.—Prohibition against using dynamite and noxious substances for destruction of fish.

If any person—

- (a) uses dynamite or other explosive substance with intent thereby to take or destroy fish in any waters (including any territorial waters adjoining the coast of England or Wales); or
- (b) puts any poison, lime, or noxious material in any such waters with intent thereby to take or destroy any of the fish that may then be or may thereafter be put therein; or
- (c) unlawfully or maliciously cuts through, breaks down or otherwise destroys any dam, floodgate or sluice with intent thereby to take or destroy fish;

he shall be liable to a fine not exceeding fifty pounds or to imprisonment with or without hard labour for a term not exceeding three months.

(y) Defence (General) Regulations, 1939, No. 54 AA; S.R. and O., 1940, No. 1032.

FISH NOMENCLATURE.

Owing to the wide variety of names applied to fish in different parts of the country, the Ministry of Agriculture and Fisheries, in response to a request from the trade, issued the following list(z) of trade names and their scientific equivalents, which, of course, has no statutory authority but is now very widely adopted.

PROPOSED TRADE NAMES AND SCIENTIFIC EQUIVALENTS.

<i>Trade Name.</i>		<i>Scientific Name.*</i>
1.	Anchovy.. ..	<i>Engraulis encrasicolus</i>
2.	Angel-fish	<i>Rhina squatina</i>
3.	Atherine.. ..	<i>Atherina presbyter</i>
4.	Bass	<i>Labrax lupus</i>
5.	Bib	<i>Gadus minutus</i>
6.	Bream	<i>Pagellus centrodontus</i>
7.	Brill	<i>Rhombus laevis</i>
8.	Cod	<i>Gadus morhua</i>
9.	Conger	<i>Conger vulgaris</i>
10.	Dab	<i>Pleuronectes limanda</i>
11.	Eel	<i>Anguilla vulgaris</i>
12.	Elong	<i>Molva elongata</i>
13.	Flake	<i>Acanthias vulgaris</i>
		<i>Galeus vulgaris</i>
		<i>Mustelus vulgaris</i>
		<i>Scyllium canicula</i>
14.	Flounder	<i>Pleuronectes flesus</i>
15.	Forkbread	<i>Phycis blennoides</i>
16.	Garfish	<i>Belone vulgaris</i>
17.	Grey Mullet	<i>Mugil chelo</i>
		<i>Mugil capito</i>
		<i>Mugil auratus</i>
		<i>Trigla gurnardus</i>
18.	Gurnet	<i>Trigla cuculus</i>
		<i>Trigla lyra</i>
		<i>Trigla hirundo</i>
		<i>Trigla lineata</i>
19.	Haddock	<i>Gadus aeglefinus</i>
20.	Hake	<i>Merluccius vulgaris</i>
21.	Halibut	<i>Hippoglossus vulgaris</i>
22.	Herring	<i>Clupea harengus</i>
23.	Lance	<i>Ammodytes lanceolatus</i>
		<i>Ammodytes tobianus</i>
24.	Lascar	<i>Solea lascaris</i>
25.	Lemon	<i>Pleuronectes microcephalus</i>
26.	Mackerel.. ..	<i>Scomber scomber</i>
27.	Megrim	<i>Arnoglossus megastoma</i> (of Day)
28.	Monk	<i>Lophius piscatorius</i>
29.	Pilchard	<i>Clupea pilchardus</i>
30.	Plaice	<i>Pleuronectes platessa</i>

* Scientific names taken from "Fishes of Great Britain and Ireland," by Francis Day, 1880-84.

(z) Fisheries Notice No. 23, Ministry of Agriculture and Fisheries, 1935.

PROPOSED TRADE NAMES AND SCIENTIFIC EQUIVALENTS (continued).

	Trade Name.	Scientific Name.*
31.	Pollack ..	<i>Gadus pollachius</i>
32.	Pouting ..	<i>Gadus luscus</i>
33.	Red Mullet ..	<i>Mullus surmuletus</i>
34.	Rock ..	<i>Anarrhichas lupus</i>
35.	Saithe ..	<i>Gadus virens</i>
36.	Scad ..	<i>Caranx trachurus</i>
37.	Skate ..	{ All <i>Raia</i> species including <i>Raia radiata</i> <i>Raia clavata</i> <i>Raia batis</i>
38.	Smelt ..	<i>Osmerus eperlanus</i>
39.	Sole ..	<i>Solea vulgaris</i>
39A.	Slip (Sole under $\frac{1}{2}$ lb.)	
40.	Sprat ..	<i>Clupea sprattus</i>
41.	Thickback ..	<i>Solea variegata</i>
42.	Turbot ..	<i>Rhombus maximus</i>
43.	Tusk ..	<i>Brosmius brosme</i>
44.	Whiting ..	<i>Gadus merlangus</i>
45.	Witch ..	<i>Pleuronectes cynoglossus</i>
46.	Wrasse ..	<i>Labrus maculatus</i>
47.	Whitebait ..	Young stages of Herring, Sprat and Pilchard

* Scientific names taken from "Fishes of Great Britain and Ireland," by Francis Day, 1880-84.

SCIENTIFIC, LOCAL AND RECOMMENDED NAMES.

No.	Scientific Name.*	Other Names (and where used).†	Recommended Title to be compulsorily used, without prefix or suffix other than actual place of origin.
1	<i>Engraulis encrasicolus</i>		Anchovy
2	<i>Rhina squatina</i>	Buffoon (Plymouth, Hallsands and Beesands) Fiddle Fish (Lowestoft) Kettlemaw (Folkestone, Hastings, Brighton) Kingston (Kent and Sussex) Monk (Hull, Plymouth, Fowey, Prussia Cove, Milford Haven, Swansea) Mulvana (St. Ives) Sea-devil (Cornwall) Sting Ray (Ilfracombe) Toad-fish (Portwrinkle)	Angel-fish

* Authority.—"Fishes of Great Britain and Ireland," by Francis Day, 1880-84.

† Authority.—List supplied by the Ministry of Agriculture and Fisheries, No. F.G. 286.

SCIENTIFIC, LOCAL AND RECOMMENDED NAMES—*contd.*

No.	Scientific Name.*	Other Names (and where used).†	Recommended Title to be compulsorily used, without prefix or suffix other than actual place of origin.
3	<i>Atherina presbyter</i>	Smelt, sand-smelt Atherine	Atherine
4	<i>Labrax lupus</i>		Bass
5	<i>Gadus minutus</i>	Codling (Ilfracombe) Perkin Cod (Coverack) Power (Polkirt) Ribbon Pout (Cornwall) Slink (North Shields) Thin Cod (Brighton, Portwrinkle) Wife (Newlyn)	Bib
6	<i>Pagellus centrodontus</i>	Boger (half-grown) (Cornwall) Bollard (Falmouth) Bollard (small fish) (Polkirt) Brain (Plymouth) Chad (Polkirt, Porthleven (small fish), Coverack, Falmouth, Portwrinkle) Pan-dories (Swansea) (very large and scarlet) Soldier (Grimsby) (red)	Bream
7	<i>Rhombus laevis</i>	Kite (Devon and Cornwall)	Brill
8	<i>Gadus morhua</i>	Heaver (St. Ives) (medium fish) Slink (Wales) ("spent" fish) Sprag (Scarborough, Hull, Grimsby, Lowestoft, Milford Haven, Swansea) (medium fish) Sprag (Hartlepool, Scarborough (small fish), Grimsby) Tamling (St. Ives, Polkirt) (small fish) Tommy Cod (Hastings, Folkestone) (small fish)	Cod
9	<i>Conger vulgaris</i>	Rushlight (Folkestone) (small fish) Strap (Falmouth, Scillies)	Conger
10	<i>Pleuronectes limanda</i>	Flat (Berwick)	Dab
11	<i>Anguilla vulgaris</i>	Fresh-water Eel	Eel
12	<i>Molva elongata</i>	Elongater (Plymouth)	Elong

* *Authority*.—"Fishes of Great Britain and Ireland," by Francis Day, 1880-84.

† *Authority*.—List supplied by the Ministry of Agriculture and Fisheries, No. F.G. 286.

SCIENTIFIC, LOCAL AND RECOMMENDED NAMES—*contd.*

No.	Scientific Name.*	Other Names (and where used).†	Recommended Title to be compulsorily used, without prefix or suffix other than actual place of origin.
13	<i>All the Dog-fishes—</i> <i>Acanthias</i> <i>vulgaris</i> <i>Galeus vulgaris</i> <i>Mustelus</i> <i>vulgaris</i> <i>Scyllium</i> <i>canicula</i> <i>Scyllium catulus</i>	Flake (Falmouth) (when skinned) Frankau (Mousehole) Nurse (Newlyn, Seaton) Nurser (Portwrinkle) Rough Hound (Polperro) Row Hound (Mevagissey) Shark (St. Ives) Small Shark (St. Ives) Stinker (Portwrinkle) Tope (Fleetwood) Flake (Ilfracombe) Miller Dog (Looe) Rig (Coverack, Mousehole) Shark (St. Ives) Smooth-coated Dog (Seaton) Stinker (Portwrinkle) Bonne (St. Ives) Doncow (Seaton) Hussy (Folkestone) Land Dog (Penzance) Margey (Newlyn, St. Ives, Mousehole) Nice Dog (Hallsands, Beesands) Robin Huss (Sussex) Row Dog (Portwrinkle) Sandy Dog (Looe, Coverack) Sea Nurse (Redcar) Suss (Isle of Wight) Dog (Looe) Flake (Plymouth, Polkirt) Picked Dog (Polkirt) Skittle Dog (Cornwall) (for male fish)	Flake
14	<i>Pleuronectes</i> <i>flesus</i>	Black Jack (Ramsgate) But (the Wash, Yarmouth) Dab (Falmouth) Fleuk (Northumberland) Flounder Lantern (Cornwall) Fluke (Berwick, Hastings, Poole, Polkirt, Polperro, St. Ives, Portwrinkle, Looe) Mud Fluke (Bridlington) Plaice Chaser (Lowestoft) Sea Bague (Isle of Man) Thick Back (Coverack) White Fluke (Bridlington, Fleetwood, Morecambe Bay)	Flounder

* *Authority*.—"Fishes of Great Britain and Ireland," by Francis Day, 1880-84.

† *Authority*.—List supplied by the Ministry of Agriculture and Fisheries, No. F.G. 286.

SCIENTIFIC, LOCAL AND RECOMMENDED NAMES—*contd.*

No.	Scientific Name.*	Other Names (and where used).†	Recommended Title to be compulsorily used, without prefix or suffix other than actual place of origin.
15	<i>Phycis blennoides</i>	Plus Four (Plymouth)	Forkbread
16	<i>Belone vulgaris</i>	Garrick (Brighton, Newlyn, Coverack, Mousehole, St. Ives) Guard (Hastings) Guardfish (Brighton, Plymouth, Newlyn) Gorbill (Folkestone) Longnose (Brighton, Dartmouth, Plymouth, Seaton, Fowey, Polkirt, Paignton, Portwrinkle, Newlyn, Looe)	Garfish
17	<i>Mugil chelo</i> <i>Mugil capito</i> <i>Mugil auratus</i>	Grey Mullet	Grey Mullet
18	<i>All the Gurnards, including—</i> <i>Trigla gurnardus</i> <i>Trigla cuculus</i> <i>Trigla lyra</i> <i>Trigla hirundo</i> <i>Trigla lineata</i>	Grey (Ramsgate) Grey Runner (Hastings) Gurnard (St. Ives) Captain (Ramsgate) Ellick (St. Ives) Red Rough (Hastings) Tub (Ilfracombe) Ellick (Prussia Cove) Tub Gurnard (Paignton) Piper Gurnard (Brighton, Porthleven, Falmouth) Parson (Prussia Cove) Tub (Lowestoft, Newlyn, Plymouth, Milford Haven, Swansea)	Gurnet
19	<i>Gadus aeglefinus</i>	Chat (North Shields, Grimsby (small fish); Lowestoft, Milford Haven, Swansea) Gibber (North Shields, Grimsby) (large fish) Jumbo (North Shields, Hull, Grimsby) (very large fish) Kit Haddock (North Shields, Grimsby) (medium fish) Ping Pong (North Shields, Hull) (very small fish) Tiddley (North Shields) (small fish)	Haddock

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SCIENTIFIC, LOCAL AND RECOMMENDED NAMES—*contd.*

No.	Scientific Name.*	Other Names (and where used).†	Recommended Title to be compulsorily used, without prefix or suffix other than actual place of origin.
20	Merluccius vulgaris	Bog Hake (Plymouth) (medium fish) Chat Hake (Hull, Milford Haven (small fish) Swansea, Fleetwood	Hake
21	Hippoglossus vulgaris	But (Scarborough, Milford Haven, Swansea) Geni (Grimsby)	Halibut
22	Clupea harengus	Herring	Herring
23	Ammodytes lanceolatus and Ammodytes tobianus	Lance (Dartmouth, St. Ives, Coverack, Portwrinkle) Lant (Dartmouth, Looe, Torcross, Newlyn, Scillies) Launce (Polkirt)	Lance
24	Solea lascaris	Merry Sole (Paignton) Sand Sole	Lascar
25	Pleuronectes microcephalus	Butter Fish (Polkirt) Cock (Hull) Cock Dab (St. Ives) Kit (Cornwall) Lemon (Lowestoft, Milford Haven, Swansea) Merry Sole (Plymouth, Newlyn, Dartmouth) Town Dab (Hastings)	Lemons
26	Scomber scomber	Joey (Folkestone, Polkirt (small fish) Portwrinkle) Cock Mackerel (Lowestoft) (small fish) Little Boy (Folkestone)	Mackerel
27	Arnoglossus megastoma (of Day)	Lantern (Brighton, Newlyn, Polkirt, Falmouth) Mag (Hull, Milford Haven) Meg (Plymouth, Swansea) Meggie (Grimsby, Fleetwood) Merry Sole (Polkirt) Megrim	Meg

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SCIENTIFIC, LOCAL AND RECOMMENDED NAMES—*contd.*

No.	Scientific Name.*	Other Names (and where used).†	Recommended Title to be compulsorily used, without prefix or suffix other than actual place of origin.
28	Lophius piscatorius	Angel (Falmouth) Fidder (Ramsgate) Fiddle Fish (Brighton) Fishing Frog (Paignton) Ham Fish (Paignton, Torquay, Ilfracombe) Polymog (Hartlepool) Round robin (Polkirt)	Monk
29	Clupea pilchardus		Pilchard
30	Pleuronectes platessa	Flat (Berwick, Hull, Grimsby) Frier (Hastings) (small fish) Ive Leaves (Lowestoft) (very small fish) Klondyker (Hastings) (large fish) Plaice Fluke (Fleetwood) Slab (Lowestoft) (very large fish) Spatter (Brighton) (small fish)	Plaice
31	Gadus pollachius	Billet (Scarborough) (large fish) Grass Whiting (Lowestoft) Lait (Whitby) Leet (Scarborough) Puddler (Berwick) (small fish) White or Silver Pollock (Hull, Milford Haven, Swansea) Whiting Pollack (Portwrinkle)	Pollack
32	Gadus luscus	Bib (Plymouth, Porthleven) (small fish) Blain (Seaton) Grundle (Lymington) Kleg (Scarborough) Old Wife (Whitby) Old Woman (Porthleven) (large fish) Pout (Lowestoft, Brighton, New- lyn, Milford Haven, Swansea) Rock Whiting (Brighton, Seaton, Ilfracombe) Spinner (Grimsby)	Pouting
33	Mullus surmuletus	Surmullet (Polkirt) Woodcock (Coverack)	Red Mullet

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SCIENTIFIC, LOCAL AND RECOMMENDED NAMES—*contd.*

No.	Scientific Name.*	Other Names (and where used).†	Recommended Title to be compulsorily used, without prefix or suffix other than actual place of origin.
34	Anarrhichas lupus	Cat (Lowestoft) Rock Salmon (Falmouth) (when skinned for market) Sand Dog (Prussia Cove, Scillies) Wolf (Hull) Woof (Hartlepool, Scarborough) Woozer (Grimsby)	Rock
35	Gadus virens	Blackjack (Berwick, Hartlepool, Scarborough, North Shields, Grimsby, Lowestoft, Fowey, Newlyn, Polkirt, St. Ives, Swansea) Black Pollack (Plymouth, Milford Haven, Swansea) Blue Back (Yorkshire) Cluffer (young fish) (Wales) Coalie (Grimsby, Milford Haven, Swansea, Fleetwood) Jack (North Shields) Nag (St. Ives) Nigger (Scarborough) Parson (Grimsby) Pollack (Paignton, Porthleven) Puddler (Berwick) (small fish) Race (Plymouth) Red Pollack (Paignton) Roaming Pollack (Polkirt) Roan Pollack (Portwrinkle) Rolling Pollack (Polperro, Cadgwith, Ruan Minor) Saithe (Berwick, Swansea, Fleetwood) Sullock (Grimsby) (small fish)	Saithe
36	Caranx trachurus	Harvest Mackerel (Ilfracombe) Horse Bob (Brighton) Scad (Looe, Plymouth, Newlyn, Portwrinkle, Senner, Cove, St. Ives, Fowey, Coverack, Mousehole, Polkirt, Prussia Cove, Porthleven)	Scad

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SCIENTIFIC, LOCAL AND RECOMMENDED NAMES—*contd.*

No.	Scientific Name.*	Other Names (and where used).†	Recommended Title to be compulsorily used, without prefix or suffix other than actual place of origin.
37	<i>All Rays and Skates, including— Raia radiata Raia clavata Raia batis</i>	Jennianifer (North Shields) Jenny (North Shields) B'Long (Ramsgate) Maid (Lowestoft) Patch (N.W. Area) Roker (Scarborough, Hull, Lowestoft, Grimsby, Milford, Swansea, Plymouth, Coverack, Polkirt, Fleetwood, Hartlepool) Thornback (Ramsgate, Brighton, St. Ives) Bluett (Lancashire coast, Wales) Flanie (Northumberland) Home (Hastings) Sandrate (Folkestone, Brighton) Skate Roker (Hastings) Skidder (Northumberland) Smooth Back (Ramsgate) Tinker (Lyme Regis)	Skate
38	<i>Osmerus eperlanus</i>	Smelt Gate (St. Ives) Sparling Sprat (Scillies)	Smelt
39 and 39A	<i>Solea vulgaris</i>	Black Sole (North Shields) Lobster (Suffolk) Slip (Milford Haven) Slip (Lowestoft, Ramsgate, Folkestone, Hastings, Poole, Swansea) (small fish) Tonga (Grimsby) Tongue (Lowestoft, Ramsgate, Swansea) (very small fish)	Sole (Slip when under $\frac{1}{2}$ lb.)
40	<i>Clupea sprattus</i>		Sprats
41	<i>Solea variegata</i>	Thickback Flounder (Coverack) Merry Sole (Prussia Cove) Slip (Porthleven)	Thickback
42	<i>Rhombus maximus</i>	But (Hastings, Plymouth, Newlyn, Polkirt, Milford Haven, Swansea) Chick (Swansea) (very small fish) Chicken But (Hastings) Roddam (Northumberland)	Turbot

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SCIENTIFIC, LOCAL AND RECOMMENDED NAMES—*contd.*

No.	Scientific Name.*	Other Names (and where used).†	Recommended Title to be compulsorily used, without prefix or suffix other than actual place of origin.
43	Brosmius brosme	Torsk, Tusk (Shetlands)	Tusk
44	Gadus merlangus	Blyn (Swansea) (small fish) Chat Whiting (North Shields) (small fish) Cobble (Brighton) (large fish) Mop (Hastings) (small fish)	Whiting
45	Pleuronectes cynoglossus	Witch (North Shields)	Witch
46	Labrus maculatus	Bulb Ray (Mousehole) Conner (Paignton, Portwrinkle) Cuckoo (Newlyn) Cuckoo (Porthleven) (multi-coloured wrasse) Fox (Porthleven) (brilliant red wrasse) Golden Maid (Lymington) Gold Maid (Lymington) Rock Connor (Dartmouth) Rock Salmon (Coverack) Sea Bream (Ilfracombe) Tench (Folkestone) (angler's name) Wrathe (Looe)	Wrasse
47	Young of herring, sprat and pilchard— Clupea herengus Clupea sprattus Clupea pilchardus		Whitebait

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† *Authority*.—List supplied by the Ministry of Agriculture and Fisheries, No. F.G. 286.

CHAPTER 11

CONTAMINATION OF FOOD.

Many kinds of food are easily contaminated, thereby rendering them dangerous or unsuitable for human consumption. Contaminated food may be unfit for human food because of the nature of the contamination itself, *e.g.* metallic contamination, bacterial contamination of certain forms, or as a result of changes in the food itself, *e.g.* decomposition arising from bacterial contamination. At all times, therefore, it is essential that adequate steps should be taken, at every stage of production or manufacture, transport, storage and exposure for sale, to prevent food being contaminated in any way. This necessitates an appreciation on the part of food manufacturers and traders of the highly perishable nature of many foods and the need for the maintenance of scrupulous cleanliness at all times.

Local authorities and their sanitary officers should pay particular attention to this matter, and very frequent inspections should be carried out of the premises of food manufacturers and traders, and premises where food is sold, including food-preparing premises (see Chapter 19, *post*, p. 465), restaurants and eating-houses.

PROVISIONS WITH RESPECT TO ROOMS USED FOR THE STORAGE, ETC., OF FOOD.

The rules with respect to rooms in which food intended for human consumption, *other than milk* (as to which, see Chapter 14, *post*, p. 386), is prepared for sale or sold, or offered or exposed for sale, or deposited for the purpose of sale or of preparation for sale, designed to prevent contamination, are contained in section 13 of the Act of 1938, *infra*.

Section 13, Food and Drugs Act, 1938.—Provisions as to rooms where food intended for sale is prepared or stored, etc.

- (1) Subject to the provisions of this section, the following provisions shall have effect in relation to every room in which any food intended for human consumption, other than milk, is prepared for sale or sold, or offered or exposed for sale, or deposited for the purpose of sale or of preparation for sale, that is to say—
 - (a) no sanitary convenience, dustbin or ashpit shall be within, or communicate directly with, the room, or be so placed that offensive odours therefrom can penetrate into the room ;

- (b) no cistern for the supply of water to the room shall be in direct communication with, or discharge directly into, a sanitary convenience, and there shall not be within the room any outlet for the ventilation of a drain, or, except with the approval of the local authority, an inlet into any drain conveying sewage or foul water ;
- (c) the walls, ceiling, floor, windows and doors of the room shall be kept in a proper state of repair ;
- (d) the walls, ceiling and doors of the room shall be painted, whitewashed, cleansed, or purified as often as may be necessary to keep them clean, and the windows of the room shall be kept clean ;
- (e) the room shall not be used as a sleeping-place, and, so far as may be necessary to prevent risk of infection or contamination of food in the room, no sleeping-place adjoining the room shall communicate therewith except through the open air, or through an intervening ventilated space ;
- (f) except in the case of an artificially refrigerated room, suitable and sufficient means of ventilation shall be provided and suitable and sufficient ventilation shall be maintained ;
- (g) no refuse or filth, whether solid or liquid, shall be deposited or allowed to accumulate in the room, except so far as may be necessary for the proper carrying on of the trade or business for which the room is used, and the floor of the room shall be cleansed as often as may be necessary to keep it clean ;
- (h) cleanliness shall be observed by persons employed in the room both in regard to the room and all articles, apparatus and utensils therein, and in regard to themselves and their clothing ; and
- (i) there shall be provided in, or within reasonable distance of, the room suitable washing basins and a sufficient supply of soap, clean towels and clean water, both hot and cold, for the use of persons employed in the room :

Provided that paragraph (i) of this subsection shall not apply in relation to a room which is used for the sale or storage, or for the sale and storage, of food contained in containers of such materials, and so closed, as to exclude all risk of contamination, but is not otherwise used for any purpose in connection with the preparation, storage or sale of food.

- (2) If, in the case of a room to which the preceding subsection applies—
 - (a) any of the requirements of that subsection are not complied with ; or
 - (b) any person does or permits any act or thing in contravention of that subsection, or fails to take all such steps as may be reasonably necessary to prevent risk of contamination of food in the room ; or
 - (c) any person prevents the owner of the room from executing any work necessary to make the room comply with the said requirements,

then, in the first-mentioned case, the occupier of the room and, in the other cases mentioned, the person in question, whether he be the occupier or not, shall be liable to a fine not exceeding twenty pounds and to a further fine not exceeding five pounds

for each day during which the offence continues after conviction therefor.

- (3) If, in the case of a room to which subsection (1) of this section applies, any of the requirements specified in paragraphs (a), (b), (c) or (f) of that subsection is not complied with, then, in so far as that requirement is of a structural character, the owner of the room shall, if he let it for the purpose of being used for the preparation, sale or storage of food, or, if not having so let it, he permits it to be so used after receiving notice from the local authority, be liable to the penalty mentioned in the last preceding subsection, but without prejudice to the liability of the occupier under that subsection.
- (4) Where the owner of a room who did not let it for the purpose of being used for the preparation, sale or storage of food executes any work necessary to make the room comply with the requirements of subsection (1) of this section, he may recover the expenses incurred by him in so doing from the occupier of the room summarily as a civil debt.
- (5) In this section, the expression "room" includes a shop or cellar or any other part of a building, and a shed, store or outbuilding or any part thereof, and the provisions of this section, except paragraphs (e) and (f) of subsection (1) thereof, shall, so far as applicable, apply in relation to a yard, forecourt or area as they apply in relation to a room.
- (6) Save in so far as may be expressly provided by Food Regulations, neither this nor the next succeeding section shall apply in relation to premises which are used for the preparation, sale or storage of articles prepared from, or consisting of, materials other than those of animal or vegetable origin, but are not otherwise used for any purpose in connection with the preparation, storage or sale of food.

It should be noted that in accordance with subsection (5), *supra*, the expression "room" includes a shop or cellar or any other part of a building, and that the provisions of the section, with the exception of paragraphs (e) and (f) of subsection (1), apply to a yard, forecourt or area as they apply in relation to a room. This is of the greatest importance when dealing with open markets and stalls, etc., outside shops. With regard to subsection (1)(g) the sanitary inspector of an *urban* authority is empowered by section 79 of the Public Health Act, 1936(a), to serve notice upon the owner of any manure or noxious matter or upon the occupier of the premises where it is found, requiring its removal within twenty-four hours. If the matter is not removed in accordance with the notice, the sanitary inspector may have it removed and the local authority may recover the expenses incurred from the owner or occupier in default(b). Any accumulation or deposit which is a nuisance or prejudicial to health is a statutory nuisance within the meaning of section 92 of the Public Health Act, 1936(c), and

(a) 29 Halsbury's Statutes 386.

(b) See the author's "*Sanitary Administration*," Second Edition, 1944, London, Butterworth & Co., Ltd., p. 192.

(c) 29 Halsbury's Statutes 394.

can be dealt with summarily in accordance with the provisions of that Act(d).

Particular attention should be paid to the enforcement of the provisions of paragraphs (h) and (i) of subsection (1) of section 13, *supra*, with respect to the observance of cleanliness by persons engaged in the handling of food. The Ministry of Health drew attention to the matter in a Circular issued in 1940(e), in which it was stated that one of the commonest causes of the spread of enteric diseases is the contamination of food, including milk, by the hands of persons excreting the causal organisms of the disease, whether they are actually suffering from the disease, or are chronic carriers of infection, or are temporarily excreting the causal organisms without themselves being ill. The thorough washing of their hands by mixers, bakers, cooks and all other persons engaged in the preparation and subsequent handling of food for sale, on commencing work or resuming work after an interval, and also after every act of defæcation or urination, will go far to exclude the risk of the contamination of food by organisms which cause such diseases as enteric fever (including typhoid and paratyphoid fever), dysentery, food poisoning and intestinal parasitism.

The provisions of subsection (3) of section 13, *supra*, are important. It will be observed that the *owner* is liable to a penalty if he lets a room for the purpose of being used for the preparation, sale or storage of food or, if not having so let it, he permits it to be so used after receiving notice from the local authority. It is clear that this subsection is designed to prevent unsuitable premises being let or continued in use for the preparation, storage or sale of food. It is most important that sanitary officers should be constantly on the watch with a view to the discovery of rooms used for any of these purposes which may be unsuitable for such use. The power of the owner to recover from the occupier the cost of carrying out works in order to comply with the provisions of subsection (1), *supra*, contained in subsection (4) of section 13, *supra*, should also be noted.

It should be remembered that section 81 of the Act of 1938 (see *ante*, p. 172) provides that—

- (a) articles commonly used for human consumption shall, if sold or offered, exposed or kept for sale, be presumed, until the contrary is proved, to have been sold, or, as the case may be, to have been or to be intended for sale, for human consumption ;
- (b) any article commonly used for human consumption which is found on premises used for the preparation, storage, or sale of

(d) See the author's "*Sanitary Administration*," Second Edition, 1944, London, Butterworth & Co., Ltd., pp. 216 *et seq.*

(e) Circular 2198, Ministry of Health, 25th November, 1940—"Precautions against the spread of Alimentary Infections."

that article and any article commonly used in the manufacture of products for human consumption which is found on premises used for the preparation, storage or sale of those products, shall be presumed, until the contrary is proved, to be intended for sale, or for manufacturing products for sale, for human consumption ; and

- (c) any substance capable of being used in the composition or preparation of any article commonly used for human consumption which is found on premises on which that article is prepared, shall, until the contrary is proved, be presumed to be intended for such use.

BYELAWS WITH RESPECT TO THE HANDLING, ETC., OF FOOD.

Section 15 of the Act of 1938, *infra*, enables a local authority to make byelaws with respect to the handling, wrapping and delivery of food, etc.

Section 15, Food and Drugs Act, 1938.—Byelaws with respect to the handling, wrapping, etc., of food and the sale of food in the open air.

- (1) A local authority may make byelaws for securing the observance of sanitary and cleanly conditions and practices in connection with the handling, wrapping and delivery of food sold or intended for sale for human consumption, and in connection with the sale or exposure for sale in the open air of food intended for human consumption :

Provided that in London the authority to make byelaws under this section shall be—

- (a) as respects the City of London, the common council ; and
 - (b) as respects the rest of London, the county council.
- (2) Byelaws made under this section by the London County Council may be made to apply to the whole or any part of London outside the City and it shall be the duty of every local authority to enforce within their district any byelaws so made.
- (3) If and so far as a byelaw made under this section is inconsistent with any regulation made under this Act, the latter shall prevail.
- (4) An authority who propose to apply to the Minister for confirmation of any byelaws made under this section shall, in addition to complying with any other statutory requirements, publish in the London Gazette, at least one month before the application is made, notice of their intention to apply for confirmation.

The Minister of Health is the confirming authority as respects any byelaws made in accordance with the provisions of section 15, *supra*(f). The procedure with regard to the making of byelaws is laid down by section 250 of the Local Government Act, 1933(g). Model byelaws under section 15, *supra*, have not yet been issued by the Ministry of Health.

(f) Sect. 91, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 308 ; and see *ante*, p. 3.

(g) 26 Halsbury's Statutes 440.

REGULATIONS AS TO FOOD.

The Minister of Health is empowered by section 8 of the Act of 1938 (see *ante*, p. 159) to make regulations covering the following matters :—

- (a) authorising measures to be taken for the prevention of danger to health from the importation, preparation, transport, storage, exposure for sale and delivery of food of various kinds intended for sale or sold for human consumption ;
- (b) requiring wrappers or containers enclosing or containing food of various kinds to be labelled or marked in accordance with the regulations ; and
- (c) prohibiting or restricting the addition of any substance to, and regulating generally the composition of, any food.

Regulations have not yet been made under this section but it is anticipated that they will include provisions designed to prevent the contamination of food.

Regulations under section 8, *supra*, cannot be made in respect of bread and flour, but the Minister is empowered by section 30 of the Act of 1938 (see *ante*, p. 223) to make somewhat similar regulations with respect to bread and flour. Such regulations may include, *inter alia*, provisions designed to prevent danger to health from the importation, preparation, transport, storage, exposure for sale and delivery of bread or flour. No regulations have been made under this section, but the Bread (Control and Maximum Prices) Order, 1943(*h*), and the Flour Order, 1943(*i*), contain emergency provisions with respect to bread and flour.

FOOD-PREPARING PREMISES.

Section 14 of the Act of 1938 (see *post*, p. 465) requires all premises used for the preparation or sale of ice-cream or for the preparation or manufacture of sausages or potted, pressed, pickled or preserved food intended for sale, to be registered by the local authority. An authority are empowered to refuse or cancel the registration if they are of opinion that the premises do not satisfy the requirements of section 13 of the Act of 1938 (see *ante*, p. 313), or are otherwise unsuitable for use for the purpose for which they are proposed to be used. In deciding whether premises are suitable for the preparation or manufacture of preserved food, particular attention should be directed to the measures proposed to be taken to prevent contamination, and if the arrangements do not appear satis-

(*h*) S.R. and O., 1943, No. 42, amended by S.R. and O., 1943, Nos. 88 and 226.

(*i*) S.R. and O., 1943, No. 11.

factory for this purpose, registration under section 14, *supra*, should be refused or cancelled.

As to food-preparing premises generally, see Chapter 19, *post*, p. 465.

SPECIAL PROVISIONS WITH RESPECT TO THE CONTAMINATION OF FOOD.

Meat.—Meat is particularly liable to be contaminated at the time of slaughter unless adequate steps are taken during all stages of slaughter and dressing of carcasses. Local authorities are empowered by section 58 of the Act of 1938 (see *ante*, p. 269) to make byelaws with respect to slaughterhouses, and these may include byelaws designed to prevent the contamination of meat.

Article 13 of the Public Health (Meat) Regulations, 1924(*k*), prohibits the blowing or inflation with the breath, or in any other manner likely to cause infection or contamination, of any carcase or part of the carcase of any animal slaughtered for human consumption. Article 20(I) of the Regulations of 1924, *supra*, requires the occupier of every room in which meat is sold or exposed for sale or deposited for the purpose of sale or of preparation for sale, or with a view to future sale, to comply, *inter alia*, with the following requirements :—

- (i) No urinal, water-closet, earth-closet, privy, ashpit or other like sanitary convenience shall be within such room or shall communicate directly therewith, or shall be otherwise so placed that offensive odours therefrom can penetrate to such room ; and
- (ii) No cistern for supplying water to such room shall be in direct communication with or directly discharge into any such sanitary convenience.

Under the Meat (Addition of Preservative) Order, 1941(*l*), meat may contain sulphur dioxide as a preservative, subject to the authority of the Minister of Food and in accordance with any directions given by him. Such preservative may only be used by officers of the Ministry in Government Controlled Slaughterhouses (see *ante*, p. 188), and the process consists of rubbing down the surface of the meat with a solution of 2 per cent. of SO_2 . Owing to the nature of the process, it is not practicable to specify any limit to the amount contained in the meat, but in view of the solution strength the quantities absorbed are very slight(*m*).

(*k*) S.R. and O., 1924, No. 1432 ; and see *ante*, p. 269.

(*l*) S.R. and O., 1941, No. 1395.

(*m*) Circular FSL/2/45, Ministry of Food, 12th February, 1945.

Milk.—With a view to the prevention of the contamination of milk, Article 14 of the Milk and Dairies Order, 1926(*n*), prohibits the keeping of milk in any room which, *inter alia*, communicates directly by door, window or otherwise, with any water-closet, earth-closet, privy, cesspool, or receptacle for ashes or other refuse.

Ice-cream.—As in the case of all milk-products, ice-cream is easily contaminated and particular care is necessary at every stage of its manufacture, storage, transport and sale to prevent its becoming contaminated and consequently dangerous to health. Reference has already been made to the provisions of section 16 of the Act of 1938 (see *ante*, p. 212) with respect to the display of notices by persons selling ice-cream, etc., in streets and public places. Further provisions are contained in section 37 of the Act of 1938 (see *post*, p. 401) with respect to ice-cream likely to cause milk-borne disease(*o*). As to ice-cream generally, see Chapter 7, *ante*, p. 211.

Shellfish.—As to the special provisions with respect to shellfish, see Chapter 10, *ante*, p. 299.

Food poisoning.—As to food poisoning, see Chapter 12, *post*, p. 322.

Rats and mice.—Rats and mice are frequently the cause of the contamination of food-stuffs. Quite apart from the losses due to the consumption of food by rodents, they render vast quantities unfit for human food on account of contamination. Local authorities are empowered by the Rats and Mice (Destruction) Act, 1919(*p*), and the Infestation Order, 1943(*q*), to require the *occupiers* of premises to take steps to secure the destruction of rats and mice, and the rat-proofing of buildings(*r*).

Notices to be displayed by persons selling food from vehicles.—Every person selling ice-cream in a street or other place of public resort from a stall, cart, barrow or other vehicle, or from a basket, pail, tray or other container used without a stall or vehicle, must have his name and address legibly and conspicuously displayed on the stall, vehicle or container. A local authority may at any time resolve that the same requirement shall apply in relation to all kinds of food, or to any

(*n*) S.R. and O., 1926, No. 821 ; and see *post*, p. 387.

(*o*) "*Milk-borne disease*" means enteric fever (including typhoid and paratyphoid fevers) ; dysentery ; diphtheria ; scarlet fever ; acute inflammation of the throat ; gastro-enteritis and undulant fever—see sect. 37(5) and Part II of Sched. I, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 278, 318 ; and see *post*, p. 401.

(*p*) 13 Halsbury's Statutes 963.

(*q*) S.R. and O., 1943, No. 680.

(*r*) As to rats and mice generally, see the author's "*Housing Administration*," Second Edition, 1938, London, Butterworth & Co., Ltd., pp. 428 *et seq.*

kinds of foods specified by them(s). It has been held, under a local Act, that a piece of land which is habitually used by the public may be a place of public resort notwithstanding that it is so used without the owner's consent(t). It is desirable that all local authorities should apply the provisions of section 16 to all classes of food sold in streets, etc., in their area, as by so doing there is a tendency to restrict or prevent the sale of food of doubtful character. In any case it is distinctly advantageous, both to the purchaser and the officers of the local authority, to know immediately the name and address of itinerant vendors selling food in their district.

(s) Sect. 16, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 265.

(t) *Kitson v. Ashe*, [1899] 1 Q.B. 425 ; 25 Digest 436, 331.

CHAPTER 12.

FOOD POISONING.

The term " food poisoning " is not defined. It is generally considered to include all types of illness due to the consumption of food or drink which has been contaminated in one way or another. In its widest sense, food poisoning includes—

- (a) Products which are in themselves toxic, *e.g.* poisonous fungi ;
- (b) Products contaminated chemically, *e.g.* presence of poisonous metals, such as lead, tin, antimony, etc. ;
- (c) Products infected by parasites ; and
- (d) Bacterial food poisoning(a).

Although cases of food poisoning are now notifiable, in accordance with the provisions of section 17 of the Act of 1938, see *infra*, the term " food poisoning " has not been defined in the statute. Notwithstanding that the expression includes types of poisoning due to causes other than of a bacterial origin, food poisoning is generally due to bacterial contamination of food.

NOTIFICATION OF CASES OF FOOD POISONING.

Section 17 of the Act of 1938, *infra*, requires every medical practitioner to notify the medical officer of health of every case of food poisoning. The procedure with respect to notification is similar to that for cases of infectious disease which are compulsorily notifiable under the Public Health Act, 1936(b).

Section 17, Food and Drugs Act, 1938.—Notification of cases of food poisoning.

- (1) If a registered medical practitioner becomes aware, or suspects, that a patient whom he is attending within the district of any local authority is suffering from food poisoning, he shall forthwith send to the medical officer of health of that district a certificate stating—
 - (a) the name, age and sex of the patient, and the address of the premises where the patient is ; and
 - (b) particulars of the food poisoning from which he is, or is suspected to be, suffering,

and also stating whether the case occurs in the private practice of the practitioner, or in his practice as medical officer of a public body or institution.

(a) See " *Synopsis of Hygiene*," Jameson & Parkinson, Eighth Edition, 1944, London, J. & A. Churchill, pp. 386 *et seq.*

(b) See the author's " *Sanitary Administration*," Second Edition, 1944, London, Butterworth & Co., Ltd., p. 418.

- (2) A local authority shall pay to a registered medical practitioner for each certificate duly sent by him under the preceding subsection to their medical officer of health a fee of two shillings and sixpence if the case occurs in his private practice, and a fee of one shilling if it occurs in his practice as medical officer of any public body or institution.
- (3) Where the medical practitioner attending a patient is himself the medical officer of health of the district, he shall be entitled to the fee to which, if he were not the medical officer of health, he would have been entitled in respect of a certificate sent by him to the medical officer.
- (4) Notwithstanding any enactment which in London might entail such a disqualification, the acceptance by a medical practitioner of a fee under this section shall not subject him to disqualification for being a member of any authority or holding any other public office.

SUSPECTED FOOD.

Where any food is suspected of being likely to cause food poisoning the medical officer of health is empowered by section 18 of the Act of 1938, *infra*, to prohibit the use of the food for human consumption.

Section 18, Food and Drugs Act, 1938.—Provisions as to suspected food.

- (1) If the medical officer of health of a district has reasonable ground for suspecting that any food of which he, or any other officer of the local authority of the district, has procured a sample under the provisions of this Act is likely to cause food poisoning, he may give notice to the person in charge of the food that, until his investigations are completed, the food, or any specified portion thereof, is not to be used for human consumption and either is not to be removed, or is not to be removed except to some place specified in the notice.
A person who uses or removes any food in contravention of the requirements of a notice given under this subsection shall be liable to a fine not exceeding ten pounds.
- (2) If, as a result of his investigations, the medical officer is satisfied that the food in question, or any portion thereof, is likely to cause food poisoning, he may deal with it as food falling within subsection (1) of section ten of this Act and subsections (2) and (3) of that section shall apply accordingly, but, if he is satisfied that it may safely be used for human consumption, he shall forthwith withdraw his notice.
- (3) If a notice given under subsection (1) of this section is withdrawn by the medical officer of health, or if the justice of the peace before whom any food is brought under this section refuses to condemn it, the local authority shall compensate the owner of the food to which the notice relates for any depreciation in its value resulting from the action taken by the medical officer.

In order that samples of food may be examined to determine whether they are likely to cause food poisoning, county

councils and local authorities (see *ante*, p. 18) may provide facilities for the bacteriological and other examinations necessary(c).

It should be noted that where the medical officer is satisfied that the food in question is likely to cause food poisoning, such food may be dealt with as unsound food within the meaning of section 10(1) of the Act of 1938 (see *ante*, p. 227). The procedure with respect to seizure and condemnation laid down in subsections (2) and (3) of section 10, *supra*, apply.

Where the food is subsequently found not to be likely to cause food poisoning and it is released for human consumption, the owner is entitled to compensation for any depreciation of the food due to the action of the medical officer. It should be noted that compensation is limited to those cases where—

- (a) a notice served by the medical officer of health in accordance with subsection (1) of section 18, *supra*, is withdrawn ; or
- (b) the justice of the peace before whom any food is taken for condemnation in accordance with subsection (2) of section 18, *supra*, and section 10 of the Act of 1938 (see *ante*, p. 227), refuses to condemn the food.

The payment of compensation is governed by section 86 of the Act of 1938 (see *ante*, p. 9), which provides that in case of dispute the matter must be determined by arbitration(d).

The notice by the medical officer of health, which should be in writing(e), has not been prescribed by the Minister of Health, but the following is suitable for the purpose :—

CITY OF OXFORD.

FOOD AND DRUGS ACT, 1938.

Suspected Food Poisoning.

To :

TAKE NOTICE that I, A.....B....., Medical Officer of Health to the City of Oxford, being satisfied that the food detailed below is likely to cause food poisoning, HEREBY prohibit the use of the said food for human consumption until this NOTICE is withdrawn, and prohibit the removal of the said food from the premises known as.....

Details of Food.

Dated this.....day of.....194....

(Signed) A. B.
Medical Officer of Health.

(c) Sect. 67, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 294.
(d) As to arbitration, see sect. 303, Public Health Act, 1936, incorporated in the Food and Drugs Act, 1938, by sect. 96 ; 31 Halsbury's Statutes 311.
(e) See sect. 283, Public Health Act, 1936, incorporated in the Food and Drugs Act, 1938, by sect. 96 ; 31 Halsbury's Statutes 311.

The notice may be varied to suit the case where the medical officer of health permits the food to be moved from its place of deposit to another place approved by the medical officer.

PREVENTION OF CONTAMINATION OF FOOD.

Reference should be made to Chapter 11, *ante*, p. 313, for the provisions of the Act of 1938 and regulations made thereunder, relative to the prevention of contamination of food, which are designed, *inter alia*, to avoid the occurrence of cases of food poisoning.

PROVISIONS WITH RESPECT TO ICE-CREAM.

The special provisions of the Act of 1938 relating to ice-cream (see Chapter 15, *post*, p. 397) enable the medical officer of health to prohibit the consumption of ice-cream if he is of opinion that it is likely to cause milk-borne disease. The procedure for stopping the supply of ice-cream is similar to that contained in section 18 of the Act of 1938, *supra*. It should be noted that the expression "milk-borne disease" means enteric fever (including typhoid and paratyphoid fevers), dysentery, diphtheria, scarlet fever, acute inflammation of the throat, gastro-enteritis, undulant fever and any other disease which the Minister of Health by order declares to be a milk-borne disease (*f*).

PROCEDURE WITH RESPECT TO CASES OF FOOD POISONING.

The steps to be taken in suspected cases of food poisoning are set out in considerable detail by the Ministry of Health in Memorandum 188/Med., *infra*, issued in June 1935.

Methods of investigation.—Food poisoning is divided into two classes—

- (1) cases due to contamination of food by poisonous chemicals (*e.g.* arsenic, antimony, copper, lead, alkaloids, etc.) ; and
- (2) cases due to bacterial infection of food, these being by far the most frequent—especially with food of animal origin.

Cases, however, in which the result of bacterial infection of food is the production of notifiable infectious disease, *e.g.* scarlet fever, or diphtheria conveyed by milk or ice-cream, and enteric fever by similar food or by shellfish, are excluded from this category. Bacillary dysentery may occasionally be indistinguishable clinically and epidemiologically from bacterial food poisoning and should be investigated on similar lines.

(*f*) Sect. 37(5), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 278 ; and see *post*, p. 402.

As soon as the medical officer of health has established the probability that a particular food, prepared in his district, is at fault, he should at once make detailed investigation into the conditions of its preparation and should obtain material for bacteriological or chemical examination. He will naturally take steps without delay to prevent further consumption of the suspected food by stopping its sale and recovering unconsumed portions already sold.

It will usually be advisable to secure samples from all available food materials in addition to those suspected at first sight, since it sometimes happens that food not originally suspected ultimately proves to be the material at fault. This is of special importance when it is suspected that the illness is due to an inorganic poison.

To confirm the suspicion that a particular food is at fault, a full list of everything consumed at the suspected meal by all the persons present, together with the clinical history of each person attacked, should be obtained as early as possible. The determination of the circumstances in which food poisoning has occurred often turns upon apparently trivial points, accurate recollection of which may be impossible after some days' interval. For convenience of reference, a list of headings for inquiry is appended to this Memorandum (see *post*, p. 329).

It is not necessary nor is it desirable to await the result of bacteriological or chemical examinations before commencing inquiries as to the manner in which the poisonous elements (bacterial or other) gained access to the food, as supplementary inquiries can always be made when the laboratory findings are known. For example, if there is any possibility that the food has been contaminated by arsenical or other poisonous substances during transport, inquiries should be made from the railway companies or other transport agencies concerned.

When the food suspected to have caused poisoning has not been prepared in the district, the medical officer of health should gain the co-operation of the vendor who should be invited to produce original packages and invoices and any facts available to show by what manufacturer or distributor the implicated food was supplied to him, by what route, on what date and in what bulk. The Ministry would be glad to be informed at once of the facts obtained in any such cases.

Collection of material.—(1) It is important to secure samples of any remaining portions of the *food actually consumed* by persons attacked; even minute fragments in discarded containers may be of value. Should this be impossible, food of similar origin or prepared from the same ingredients should be collected, though such specimens are much less likely to throw light on the cause. In the case of canned or potted

foods the containers with labels intact should be preserved. The experience of recent years suggests that, though almost any food may produce food poisoning, if it happens to have been infected with a salmonella, *e.g.* by fouling by rats or mice, yet the foods most to be suspected are "made-up" dishes containing meat, especially pig products. A history of the consumption of ducks' eggs within a reasonable time before onset of illness would suggest attempts to trace the flock from which the eggs came, to obtain eggs from this flock and to examine the blood of the suspected ducks for evidence of recent salmonella infection.

(2) Pathological material should be obtained from the sufferers in the acute stages of the illness whenever possible. Fæces or, failing these, rectal swabs are of the greatest importance; urine is less likely to give positive results in bacterial food poisoning, but it is important when chemical investigation is indicated. Vomited matter is not often of value bacteriologically, but should be sent when available. From fatal cases portions of the small and large intestine, spleen, liver and kidney should be obtained. The stomach (unopened and ligatured with its contents intact) is valuable if metallic poisoning is suspected, but not of much use otherwise.

(3) Samples of blood for serological tests (at least 1 ml.) should not be collected until a week has elapsed from the onset of illness, since the agglutinins to be investigated will not have fully developed till then.

Packing and transmission.—Food specimens and all pathological material should be kept in an ice-box or refrigerator if delay in dispatch is unavoidable. Specimens of excreta for bacteriological examination should be small in amount; in the case of fæces containing much mucus, a throat swab dipped in the mucus makes a satisfactory specimen; otherwise, clean, wide-mouthed, firmly corked or stoppered bottles make suitable receptacles. Food may be put in a clean tobacco or sweet tin. The organs from fatal cases should be wrapped in a clean cloth which has been wrung out of 30 per cent. glycerine solution. Contact with disinfectants must, of course, be avoided in the collection and transmission of all specimens.

It is usually difficult to provide cold storage during transport. It may be improvised by packing the specimens in their containers in a large biscuit tin containing crushed ice and itself packed in a wooden box with at least two inches of sawdust or absorbent cotton between. The specimens in their containers should be well wedged to prevent shifting as the ice melts. If ice cannot be easily procured, the specimens should be sent without it rather than be delayed.

The package should be marked " URGENT " and addressed to—

Medical Department (Med. 1),
Ministry of Health,
Whitehall,
London, S.W.1,

and should be sent by post or by passenger train if more prompt delivery can be thus effected, notifying the Medical Department, as above, in advance if possible.

The following are the current Post Office Regulations regarding articles sent for Medical Examination or Analysis :—

Deleterious liquids or substances, though otherwise prohibited from transmission by post, may be sent for medical examination or analysis to a recognised Medical Laboratory or Institute, whether or not belonging to a Public Health Authority, or to a qualified Medical Practitioner or Veterinary Surgeon within the United Kingdom by Letter Post, and on no account by Parcel Post, under the following conditions :—

Any such liquid or substance must be enclosed in a receptacle, hermetically sealed or otherwise securely closed, which receptacle must itself be placed in a strong wooden, leather or metal case in such a way that it cannot shift about, and with a sufficient quantity of some absorbent material (such as sawdust or cotton-wool) so packed about the receptacle as absolutely to prevent any possible leakage from the package in the event of damage to the receptacle. The packet so made up must be conspicuously marked " Fragile, with care " and bear the words " Pathological Specimen."

Any packet of the kind found in the Parcel Post, or found in the Letter Post, not packed and marked as directed, will be at once stopped and destroyed with all its wrappings and enclosures. Further, any person who sends by post a deleterious liquid or substance for medical examination or analysis otherwise than as provided by these regulations is liable to prosecution.

If receptacles are supplied by a Laboratory or Institute they should be submitted to the Postal Services Department, General Post Office, London, E.C.1, in order to ascertain whether they are regarded as complying with the regulations.

Examination of Specimens.

Chemical Examination.—When the circumstances point to poisoning not of bacterial origin, samples with all the information available should forthwith be sent for chemical analysis, ordinarily to the public analyst of the area. Little is to be gained by sending specimens of meat foods to the analyst to be examined for " ptomaines." It is doubtful if " ptomaines," in the sense of alkaloidal substances produced by bacterial action in meat foods have any significance or connection with food poisoning. Specifically infected meat foods may, however,

require chemical analysis for the determination of special points such as the presence or absence of preservatives and their nature, the determination of acidity or saltiness, and like matters.

Bacteriological Examination.—It is of obvious advantage in the investigation of cases of food poisoning that arrangements for any necessary bacteriological examination should have been considered beforehand so as to avoid the delay and trouble of making special emergency arrangements. The exact material required may vary in individual outbreaks, and in all cases the bacteriologist entrusted with the examination should be consulted as to the specimens which will be most instructive.

It is important that material should be available for any investigations which the Ministry may desire to make through their own officers. Where such an investigation is directed, an early intimation will be sent to the medical officer of health. In all cases, however, it is desirable that the chemist or bacteriologist consulted should be asked to preserve samples under suitable conditions until it has been ascertained that there is no further use for them.

Notification to Ministry of Health.—The medical officer of health is required to notify the Ministry of Health of any serious outbreak of disease and to submit to the Ministry copies of any special reports prepared by him(*g*), and it is usually desirable that the Ministry should be notified of outbreaks of food poisoning, unless of a minor and unimportant character.

Headings of Inquiry into Outbreaks of Poisoning by Meat Foods.

What cases heard of; steps taken to secure complete list of cases, *e.g.* inquiries of medical practitioners, neighbouring medical officers of health and others.

Evidence implicating particular food or foods as cause of outbreak.

Evidence implicating any particular ingredient of the food.

Origin of suspected food or ingredient.

Inquiries in affected households.

(a) Names and ages of persons in each household, (b) those ill, (c) those partaking of suspected food.

Persons affected (a) slightly, (b) seriously, (c) fatally; with date and hour of partaking of food in each case and date and hour of first symptoms in each case.

Clinical character of illness.

Particular food implicated. Date of purchase, source; any form of domestic preparation applied (*e.g.* cooking); if so, how long and to what degree; if canned meat, when opened, etc.

(*g*) Art. 17, Sanitary Officers' (Outside London) Regulations, 1935; S.R. and O., 1935, No. 1110.

Inquiries at Place of Preparation (when food implicated has been prepared in the district).

Address or description of place of preparation ; name and address of owner or occupier ; number of workers employed (male and female) ; nature of employment in each case. Any engaged also in other employments which might have connection with contamination of the suspected food.

Meat concerned ; its nature, where obtained, price paid, amount used on days concerned, how and where stored.

Evidence, positive or negative, of unsoundness of the meat.

Evidence, positive or negative, as to disease of animal from which material (meat or milk) was derived during life or ascertained post-mortem.

Possibilities of infection at slaughterhouse or place of preparation or storage. Infected rats and mice and the use of bacterial virus as rat poison.

Sanitary condition of bakehouse or food-preparing place (including distance from possible sources of contamination, e.g. middenstead, ashpit, privy, W.C., slaughterhouse, stable) ; position of drain openings ; ventilation ; general sanitary conditions.

Cleanliness of tables, floors, vessels, utensils, etc.

Preparation of food (exact details of methods employed, including history and condition of various component parts besides the meat, e.g. pastry, stock and jelly for pork pies, skins of sausages, etc.).

Handling of the food (possible contamination by "carrier" of bacteria associated with food poisoning (a) before cooking, (b) during cooking, (c) after cooking, e.g. transfer into moulds, etc.).

Temperature reached in cooking ; any experimental verification of temperature, especially as regards interior of mass ; any reason to suspect under-cooking of whole or part.

Cooling. Where food placed during cooling. Possible opportunities of contamination.

Health of workers previous to outbreak, especially in regard to diarrhoea ; their habits as to cleanliness. What W.C. accommodation for workers (where situated and condition). Arrangements for washing hands and their use.

Collection and Examination of Materials for Bacteriological Examination.

Samples collected (dates, description and quantities) of—

- | | | |
|--------------------|----|---|
| Food materials | .. | (a) Portions left over by patients ; |
| | | (b) Obtained at shops, stores or places of preparation. |
| Clinical materials | .. | (a) Blood from patients or suspected "carriers" ; |
| | | (b) Post-mortem specimens. |

Headings of Inquiry into Outbreaks of Poisoning suspected to be due to Food Contaminated with Inorganic Poisons.

What cases heard of ; steps to secure complete list of cases, e.g. inquiries of medical practitioners, neighbouring medical officers of health and others.

Evidence implicating particular food or foods as cause of outbreak.

Evidence implicating any particular ingredient of the food.

Origin of the suspected food or ingredient.

Mode in which the food or ingredient became contaminated.

Inquiries in Affected Households.

- (a) Names and ages of persons in each household, (b) those ill, (c) those partaking of suspected food.

Persons affected (a) slightly, (b) seriously, (c) fatally ; with date and hour of partaking of food in each case, and date and hour of first symptoms in each case.

Clinical character of illness.

Particular food implicated. Date of purchase ; source. (The suspected food will usually be some food consumed in common by the persons affected.)

How the suspected food was prepared, and what ingredients were utilised in preparing it.

All suspected food should be secured for chemical examination.

If there is any doubt as to the food implicated, all foods taken at the suspected meal and all food material from which the foods were prepared should be carefully preserved for examination.

Source of Contamination of the Food.

- (1) *In the household.*—Cooking utensils, rat poisons, drugs, etc.
- (2) *On retailers' premises.*—Storage in proximity to poisonous articles. Examine remainder of consignment from which suspected article was supplied. Take samples for chemical examination. Examine packages or bags for evidence of staining by poisonous material, and take samples of suspicious stains for examination. Trace empty packages or bags from which the suspected food has been sold. Ascertain date of receipt of consignment, date of dispatch from wholesaler and amount received ; also amount sold, dates on which portions were sold and names of purchasers.

Ascertain whence retailer obtained his supplies, the name of the firm supplying him and where the article was prepared or manufactured.

- (3) *At wholesalers' and manufacturers' premises.*—Method of preparation of food, opportunities for contamination, ingredients used, their origin, mode of manufacture and purity. Methods if any for controlling purity of supplies.
- (4) *In transit.*—Ascertain modes of conveyance from wholesaler to retailer and from retailer to consumer. Possibilities of contamination in delivery from retailer to consumer, *e.g.* in vans, carts, etc., containing poisonous substances.

Possibilities of contamination in transit by rail, lorry or barge from wholesaler to retailer. Ascertain whether poisonous articles were placed in the same vans with suspected food.

(It may be remarked that food contaminated in the course of preparation or by the use of impure ingredients will usually contain the poisonous material, *e.g.* arsenic, fairly uniformly distributed throughout the food. In the case of foods contaminated in course of transit the poisonous material is commonly not uniformly distributed, *e.g.* a sack of sugar contaminated by a leaking can of arsenical weed killer may contain only a few lumps of sugar saturated with arsenic ; the bulk of the sugar may remain unaffected and free from arsenic.)

Specimens for Chemical Examination.—In addition to the food and food materials mentioned above, specimens of vomit should be secured, and if a death occurs the stomach and stomach's contents together with a portion of the liver should be reserved for examination.

CHAPTER 13.

IMPORTED FOOD.

The provisions of the Act of 1938 relative to certain imported foods are contained in Part IV(*a*) which is, however, administered by the Commissioners of Customs and Excise(*b*).

Sanitary authorities(*c*) are responsible for the enforcement of the provisions of the Public Health (Imported Food) Regulations, 1937(*d*), made by the Minister of Health under powers repealed by the Act of 1938(*e*). Future Regulations regarding imported food will be made under powers conferred on the Minister of Health by—

- 1—section 8 of the Act of 1938 (see *ante*, p. 159), in respect of foods generally ;
- 2—section 20 of the Act of 1938 (see *post*, p. 341), with respect to imported milk ; and
- 3—section 30 of the Act of 1938 (see *ante*, p. 223), with respect to imported bread and flour.

In addition to their powers with respect to imported food contained in the Public Health (Imported Food) Regulations, food and drugs authorities (see *ante*, p. 19) are authorised (*f*) to enforce the provisions with respect to the marking or labelling of certain imported food (see *post*, p. 343).

RESTRICTIONS ON THE IMPORTATION OF CERTAIN FOODS.

Part IV of the Act of 1938, which is administered by the Commissioners of Customs and Excise(*g*), is construed as one with the Customs Consolidation Act, 1876(*h*), as amended by any subsequent enactment and is not deemed to be part of the Act of 1938, although the definitions in section 100 of the Act of 1938(*i*) apply to Part IV, and any reference to “ this

(*a*) 31 Halsbury's Statutes 279.

(*b*) Sect. 42(1), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 280.

(*c*) “ *Sanitary authority* ” means a port health authority and the council of a borough or urban or rural district which includes or abuts on any part of a Customs port which part is not within a port health district—Art. 2, Public Health (Imported Food) Regulations, 1937, S.R. and O., 1937, No. 329.

(*d*) S.R. and O., 1937, No. 329 ; 30 Halsbury's Statutes 725.

(*e*) Such Regulations are continued in force by sect. 101, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 316 ; and see *ante*, p. 160.

(*f*) See sect. 9, Merchandise Marks Act, 1926 ; 19 Halsbury's Statutes 904.

(*g*) Sect. 42(1), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 280.

(*h*) 16 Halsbury's Statutes 287.

(*i*) 31 Halsbury's Statutes 313.

Act " in that Part relates to the Act of 1938(*k*). Part IV of the Act of 1938 prohibits the importation into the United Kingdom of the following foods(*l*) :—

- (a) any margarine, or margarine-cheese, except in containers conspicuously marked "Margarine" or "Margarine-cheese," as the case may require ;
- (b) any adulterated or impoverished milk, except in containers conspicuously marked with a name or description indicating that the milk has been so treated ;
- (c) any other adulterated or impoverished food to which His Majesty may by Order in Council direct that this section shall be applied, except in containers conspicuously marked with a name or description indicating that the food has been so treated ;
- (d) any milk-blended butter, except in containers conspicuously marked with a name approved for the purpose by the Minister of Agriculture and Fisheries, not being a name which refers to, or is suggestive of, butter or anything connected with the dairy interest ;
- (e) any butter, margarine or milk-blended butter the sale of which would be an offence under subsection (1) of section thirty-two of the Act of 1938(*m*) ; or
- (f) any food which does not comply with any relevant provisions contained in regulations made under this, or any other, Act with respect to the importation of food.

An importer(*n*) found guilty of an offence under section 40, *supra*, is liable in the case of a first offence to a customs penalty not exceeding £20, and in the case of a subsequent offence to a customs penalty not exceeding £100 or to imprisonment for a term not exceeding three months, or to both such a penalty and imprisonment. The Commissioners may, however, elect that the maximum customs penalty shall be a sum equal to the value of the goods imported bearing the same mark or description, to be estimated and taken according to the rate and price for which goods of the like kind but of the best quality were sold at, or about, the time of the importation(*o*). Whenever the Commissioners are of opinion that an offence under Part IV of the Act of 1938 has been committed, they must communicate the name of the importer to the Minister of Agriculture and Fisheries, and such other facts as they possess as to the destination of the consignment(*p*).

For the purposes of Part IV of the Act of 1938 food is deemed to be adulterated or impoverished if any other substance has been added to it, or if any part of it has been

(*k*) Sect. 43, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 282.

(*l*) *Ibid*, sect. 40 ; 31 Halsbury's Statutes 279.

(*m*) See *ante*, p. 199.

(*n*) "Importer," in relation to an imported article, includes any person who, whether as owner, consignor, consignee, agent or broker, is in possession of, or in any way entitled to the custody or control of the article. Sect. 100, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 313.

(*o*) *Ibid*, sect. 42(3) ; 31 Halsbury's Statutes 281.

(*p*) *Ibid*, sect. 42(2) ; 31 Halsbury's Statutes 280.

abstracted, so as in either case to affect injuriously its nature, substance or quality, provided that, where regulations made under any Act of Parliament contain provisions prohibiting or restricting the addition of any substance to food, the addition of any such substance—

- 1—if made in contravention of the Regulations shall ; and
- 2—if made to an amount not exceeding the limit, if any, specified in the Regulations, shall not,

be deemed to affect injuriously the nature, substance or quality of the food in question(*q*).

The following Regulations, referred to in paragraph (f) of section 40, *supra*, dealing with imported food, are in operation:—

- Public Health (Imported Food) Regulations, 1937(*r*)—see *post*, p. 335 ;
- Public Health (Imported Milk) Regulations, 1926(*s*)—see *post*, p. 341 ;
- Public Health (Preservatives, etc., in Food) Regulations, 1925(*t*)—see *ante*, p. 177 ; and
- Public Health (Condensed Milk) Regulations, 1923(*u*)—see *ante*, p. 213.

A warranty defence cannot be pleaded in proceedings instituted under Part IV of the Act of 1938(*v*) and there is no right of appeal to quarter sessions(*w*).

Sampling of imported food.—The Commissioners of Customs and Excise must, in accordance with directions given by the Treasury, take such samples of consignments of imported food as may be necessary for the enforcement of the provisions of Part IV of the Act of 1938. Such samples must be divided into three parts, one being sent to the importer and one part to the Government Chemist, the third part being retained by the Commissioners. Where the certificate of the Government Chemist shows that an offence under Part IV has been committed the Commissioners must forthwith send a copy of the certificate to the importer(*x*). As to sampling of food and drugs, see Chapter 4, *ante*, p. 50. The certificate of the Government Chemist need not be in the form prescribed for use by public analysts(*y*).

In any proceedings taken under this Part of the Act the certificate of the Government Chemist must be accepted as

(*q*) Sect. 42(4), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 281.

(*r*) S.R. and O., 1937, No. 329.

(*s*) S.R. and O., 1926, No. 820.

(*t*) S.R. and O., 1925, No. 775.

(*u*) S.R. and O., 1923, No. 509.

(*v*) See sect. 84, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 306 ; and see *ante*, p. 175.

(*w*) *R. v. Otto Monsted, Ltd.*, [1906] 2 K.B. 456 ; 25 Digest 115, 387.

(*x*) Sect. 41, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 280.

(*y*) *Foot v. Findlay*, [1909] 1 K.B. 1 ; 25 Digest 115, 385 ; and see *ante*, p. 64

evidence unless the defendant requires the person who made the analysis to be called as a witness, in which case he must give three clear days' notice to the prosecutor(z). The portion of the sample retained by the Commissioners must be produced in court at the time of the hearing and the court may, and upon the request of either party must, cause it to be submitted for a joint analysis by the Government Chemist and some other public analyst(a).

POWERS OF LOCAL AUTHORITIES WITH RESPECT TO IMPORTED FOOD.

The following authorities are required to enforce the provisions mentioned with respect to imported food :—

- 1—*Port Health Authorities* and the council of a borough or urban or rural district which includes or abuts on any part of a Customs port which port is not within a port health district—known as a "sanitary authority"(b)—responsible for the administration of the Public Health (Imported Food) Regulations, 1937(c); and
- 2—*Food and Drugs Authorities* (see *ante*, p. 19), who are responsible for the enforcement of the marking orders made under the Merchandise Marks Act, 1926(d).

Public Health (Imported Food) Regulations, 1937.—The Minister of Health is authorised by section 8 of the Act of 1938 (see *ante*, p. 159) to make Regulations, *inter alia*, for the prevention of danger to health from the importation of food for sale or sold for human consumption and in accordance with this power, the Regulations of 1937(e) have been made by the Minister, which came into operation on the 1st April, 1938(f).

Food unfit for human consumption.—It is an offence under the Regulations to import into England and Wales for sale for human consumption any article of food(g) which has been

(z) Sect. 42(5), Food and Drugs Act, 1938; 31 Halsbury's Statutes 281.

(a) *Ibid*, sect. 42(6); 31 Halsbury's Statutes 281.

(b) Art. 2, Public Health (Imported Food) Regulations, 1937; S.R. and O., 1937, No. 329.

(c) S.R. and O., 1937, No. 329.

(d) 19 Halsbury's Statutes 898.

(e) These Regulations were actually made under provisions repealed by the Act of 1938, but by virtue of sect. 101 of that Act the Regulations were continued in force.

(f) Public Health (Imported Food) (Amendment) Regulations, 1937; P.R. 2nd December, 1937, and Circular 1666, Ministry of Health, 7th December, 1937.

(g) "*Article of food*" means an article of food, whether oversea or not, which, as part of the cargo of a ship or aircraft is brought to, or delivered or landed at a place within England or Wales, either as a place of actual or appointed destination, or as a place of deposit for the purpose of transmission to a place of actual or appointed destination elsewhere in the British Isles—Art. 2(1), Public Health (Imported Food) Regulations, 1937; S.R. and O., 1937, No. 329.

examined by a competent authority(*h*) and not found at the time of examination to be fit for human food, or any article of food in the manufacture or preparation of which any such article of food has been used(*i*).

Examination and sampling of imported food.—The medical officer of health(*k*) may examine any article of food which has been landed within his district, and, if he thinks fit, he may examine an article of food while it is on board a ship(*l*) within the district or after it has been delivered overside and before it has been landed(*m*). The master(*n*) of a ship and every person having the custody of any lands or premises within the district, must afford the medical officer of health access to a ship or to lands or premises for the purpose of the examination of imported food(*o*). The master of a ship, importer(*p*) or other person in charge of lands or premises must give every assistance to the medical officer of health in the inspection of imported food(*q*), and the medical officer may apply to a justice for a search warrant if he is refused entry on to a ship or lands or premises(*r*). If the duties of a Customs and Excise Officer with respect to imported food have not been completed the examination by the medical officer of health may not be carried out without the prior consent of the Customs officer(*s*).

The medical officer of health may take a sample of any food for the purpose of the Regulations of 1937, and where he considers it necessary, he may detain a consignment of food for a period not exceeding forty-eight hours, or for a longer period with the consent of the importer, and during that period such food may not be moved except to a place approved by the medical officer of health(*t*).

Seizure of unsound imported food.—If, on examination, the medical officer of health is of opinion that an article of food is diseased, or unsound, or unwholesome, or unfit for human

(*h*) "*Competent authority*" means an authority having power under the laws in force in any country to examine articles of food and to certify as to their fitness for human consumption; S.R. and O., 1937, No. 329.

(*i*) *Ibid*, Art. 6.

(*k*) Includes any duly qualified medical practitioner and any assistant officer appointed or employed by a sanitary authority to act in the execution of the Regulations; *ibid*.

(*l*) "*Ship*" includes a vessel or boat; *ibid* Art. 2(1).

(*m*) *Ibid*, Art. 7(1).

(*n*) "*Master*" in relation to a ship includes the officer or other person for the time being in charge or command of the ship; *ibid*.

(*o*) *Ibid*, Art. 7(2).

(*p*) "*Importer*" includes any person, whether as owner, consignor or consignee, agent or broker, who is in possession of or in anywise entitled to the custody or control of any article of food; and "*import*" is construed accordingly; *ibid*.

(*q*) *Ibid*, Art. 7(3).

(*r*) *Ibid*, Art. 7(4).

(*s*) *Ibid*, Art. 7(5).

(*t*) *Ibid*, Art. 8.

consumption he may himself or by an assistant seize and carry away the food in question or may, by notice in writing served on the importer, master or other person in charge of the place where the food is examined, prohibit the removal of the food until it has been dealt with by a justice(*u*). If the justice is satisfied that the food is diseased, etc., he must condemn it and order it to be destroyed or disposed of under the supervision of the medical officer of health by such means and in such manner as to prevent its being used for human consumption(*v*).

Overseas meat and meat products.—No “prohibited meat” may be imported into England and Wales for sale for human consumption(*w*). *Prohibited meat* means—

- (a) Scrap meat, that is to say, meat which consists of scraps, trimmings, or other pieces (whether with or without bone) of such shape or in such condition as to afford insufficient means of identification with a definite part of a carcase.
- (b) Meat comprising the wall of the thorax or abdomen from which there has been detached any part of the pleura or (except in the case of meat derived from a pig) the peritoneum, other than a part necessarily removed in preparing the meat.
- (c) Meat from which a lymphatic gland, except a gland necessarily removed in preparing the meat, has been taken out.
- (d) The head of an animal without the submaxillary gland(*x*).

Meat means the flesh or other edible parts of a bull, cow, ox, heifer, calf, ram, ewe, wether, lamb, goat, kid, boar, sow and hog, and includes meat which has been cured or smoked but otherwise does not include meat which has been cooked or otherwise treated or prepared(*y*).

It is the duty of the Customs and Excise Officer on arrival of a ship to ascertain whether the cargo comprises any overseas meat or meat product(*z*).

Meat products mean—

- (a) Meat packed in air-tight containers.
- (b) Cooked or dried meat.
- (c) Intestines and other parts prepared in the form of sausage casings.
- (d) Rendered animal fats except in margarine.
- (e) Pies, sausages and other prepared or manufactured articles of food containing any meat or cooked or dried meat other than fat(*a*).

If the Officer of Customs and Excise considers that there is any article of food which should be examined by the medical

(*u*) *Ibid*, Art. 9.
 (*w*) *Ibid*, Art. 10.
 (*y*) *Ibid*, Art. 2(1).
 (*a*) *Ibid*, Sched. 2.

(*v*) *Ibid*, Art. 15(1).
 (*x*) *Ibid*, Sched. 1.
 (*z*) *Ibid*, Art. 11(1).

officer he must give notice in writing to the master or importer, requiring that the article in question be not removed until examined by the medical officer(*b*). The latter must immediately examine any article of food detained by a Customs Officer and give that officer a copy of any notice or certificate issued by him, or a statement in writing of the action taken in respect of the article in question(*c*). If the medical officer of health is of opinion that the article of food comprises any prohibited meat or any meat or meat product without an official certificate(*d*) he must, by notice in writing, forbid its removal for any purpose other than its exportation(*e*). If, on the other hand, it is found that the article of food has an official certificate and does not comprise any prohibited meat or that it is not meat or a meat product, he must give a certificate authorising its removal, unless he takes action under any other provisions of the Regulations(*f*).

It is the duty of the sanitary authority (see *ante*, p. 335), within twelve hours of the receipt of a copy of the notice issued by the medical officer of health in accordance with Article 11(4) of the Regulations, *supra*, to give notice to the importer that unless, within the time specified in the notice, not being less than twelve hours, he gives a written undertaking to export the meat or meat products at his own expense or to prove before a justice that it is not intended for sale for human consumption, it will be destroyed or disposed of under the supervision of the medical officer of health by such means and in such a manner as to prevent its being used for human food(*g*). In the absence of such an undertaking from the importer, or on failure to export the article within seven days of the receipt of the notice, the sanitary authority may take steps to have the article destroyed or otherwise disposed of(*h*).

The Minister of Health has recognised a large number of certificates, labels, marks and stamps as "official certificates"

(*b*) S.R. and O., 1937, No. 329, Art. 11(2).

(*c*) *Ibid*, Art. 11(3).

(*d*) "Official certificate" means a certificate, label, mark, stamp or other voucher which is affixed by a competent authority to any oversea meat or meat product or to a package containing any such meat or meat product and is for the time being recognised by the Minister of Health as showing—

(*a*) that the meat to which it relates or the meat from which the meat product to which it relates, was prepared, was derived from animals inspected *ante* and *post mortem* and passed in accordance with criteria satisfactory to the Minister; and

(*b*) that all necessary precautions for the prevention of danger to public health were taken in the dressing or preparing and packing of the meat or meat product—*ibid*, Art. 2(1).

(*e*) *Ibid*, Art. 11(4).

(*f*) *Ibid*, Art. 11(5).

(*g*) *Ibid*, Art. 12(1).

(*h*) *Ibid*, Art. 12(2).

for the purpose of the above provisions, particulars of which are contained in the following circulars :—

Circular No.	Approved official certificates issued by
1639—11/8/37	Bechuanaland Protectorate Brazil Bulgaria Denmark Estonia Finland French West Africa Hong-Kong Hungary Iceland Latvia Lithuania Madagascar and Dependencies Poland Roumania Southern Rhodesia Switzerland Union of South Africa United States of America Yugoslavia
1675—24/3/38	Argentine Australia Belgium Canada Chile Free City of Danzig Netherlands New Zealand Shanghai International Settlement Sweden Uruguay
1690—31/3/38	France Kenya Colony South West Africa
1707—10/6/38	Australia Brazil Canada Czechoslovakia
1719—25/7/38	Italy Paraguay
1727—15/8/38	Chile Norway

Circular No.	Approved official certificates issued by
1741—17/10/38	Australia Germany Uruguay
1757—16/1/39	French Morocco Kenya Colony
1781—20/3/39	Lebanon Nippon (Japan) Syria Union of South Africa
2025—17/6/40	Sind
122/44—19/9/44	New Zealand

Legal proceedings.—If a justice before whom an article of imported food is taken for purposes of condemnation (see *ante*, p. 337) is satisfied that it is not intended for sale for human consumption, he must order the return of the article to the person entitled to it or the rescission of the notice prohibiting its removal(*i*). In cases of dispute under the Regulations the matter may be referred to the Minister of Health for determination, and his decision is final and conclusive(*k*).

Administrative proceedings.—Notices and certificates issued under the Regulations of 1937 may be given by properly addressing, prepaying and posting a letter containing the notice, etc.(*l*).

The sanitary authority (see *ante*, p. 332) is required to keep an accurate record of every article of food destroyed or otherwise disposed of under the supervision of the medical officer of health, and such record must be kept for a period of at least twelve months(*m*).

The Officer of Customs and Excise and the medical officer of health may require any person to give such information as is within his knowledge and render such assistance as may be reasonable, for the purposes of the enforcement of the Regulations(*n*).

A sanitary authority may appoint a legally qualified medical practitioner to act either in the place of, or as an assistant to, the medical officer, and may also, with the consent of the Minister of Health, appoint an assistant officer to act, under

(*i*) S.R. and O., 1937, No. 329, Art. 15(2).

(*l*) *Ibid*, Art. 17.

(*n*) *Ibid*, Art. 19.

(*k*) *Ibid*, Art. 16.

(*m*) *Ibid*, Art. 18.

the direction of the medical officer, in exercising the powers and carrying out the duties laid down in the Regulations of 1937(o). The latter provision enables the sanitary inspectors employed by port health authorities to carry out the inspection of imported food.

PROVISIONS WITH RESPECT TO OTHER IMPORTED FOODS.

Imported milk.—The Public Health (Imported Milk) Regulations(p) require all imported milk, including skimmed milk, to be—

- 1—free from tubercle bacilli ; and
- 2—to contain not more than 100,000 bacteria per cubic centimetre.

Importers of milk must be registered with port health authorities or other sanitary authorities, and such authorities may remove from the register a consignee of unsatisfactory imported milk. There is a right of appeal to a court of summary jurisdiction within a period of twenty-one days, and from the decision of such a court either party may appeal to quarter sessions.

Condensed milk.—Part III of the Public Health (Condensed Milk) Regulations, 1923(q), as amended in 1927 and 1943, controls the importation of condensed milk, but it is enforced by the Commissioners of Customs and Excise and not by local authorities. No condensed milk intended for sale for human consumption may be imported into England and Wales unless it—

- 1—is contained in a tin or other receptacle which is labelled in the manner prescribed in the First Schedule to the Regulations ; and
- 2—contains not less than the appropriate percentages of milk fat and milk solids as specified in the Second Schedule to the Regulations(r).

During the war emergency the provisions of Article 9 of the Regulations of 1923, *supra*, do not apply to the importation of any full-cream unsweetened condensed milk intended for human consumption which is imported in accordance with the terms of a licence granted by or on behalf of the Minister of Food(s).

(o) *Ibid*, Art. 20.

(p) S.R. and O., 1926, No. 820.

(q) S.R. and O., 1923, No. 509 ; S.R. and O., 1927, No. 1092 ; and S.R. and O., 1943, No. 896.

(r) *Ibid*, Art. 9 ; as to condensed milk generally, see Chapter 7, *ante*, p. 219.

(s) Paragraph 9, Defence (General) Regulations, 60CAA ; S.R. and O., 1944, No. 1311.

If a local authority ascertain that any condensed milk which does not comply with the provisions of the Regulations of 1923 was manufactured or labelled at a place not in England or Wales they must report the facts to the Ministry of Health(*t*).

Dried milk.—Where a local authority ascertain that any dried milk which does not comply with the provisions of the Public Health (Dried Milk) Regulations, 1923(*u*), as amended in 1927 and 1943, was manufactured or labelled outside England or Wales, the authority must communicate the facts to the Ministry of Health(*v*).

Cream.—Cream containing any thickening substance may not be imported into England and Wales if it is intended for sale(*w*).

Preserved and coloured food.—The importation into England and Wales of any article of food intended for sale which contains any added preservative or any added colouring matter, in contravention of the Public Health (Preservatives, etc., in Food) Regulations, 1925, as amended(*x*), is prohibited. Provided that—

- (i) any article of food specified in Part I of the First Schedule to the Regulations of 1925 may contain preservative of the nature and in the proportion therein specified ;
- (ii) where an article of food specified in Part I of the said Schedule otherwise than in item 4 thereof is used in the preparation of any other article of food, the latter article may contain any preservative necessarily introduced by the use of the former article, but the total proportion of any one preservative contained in any article of food specified in that Part of the Schedule must not exceed the proportion therein specified ;
- (iii) the provisions regarding the presence of preservatives in imported food do not apply so as to prohibit the presence of sulphur dioxide in any article of food other than meat if it is shown either—
 - (a) that the article not being an article specified in Part I of the said Schedule is intended to be used in the preparation of an article which is so specified ; or
 - (b) that the article being itself an article so specified, other than fruit or fruit pulp, is intended to be so treated before it is sold or exposed for sale by retail as to comply with the provisions of the Schedule as regards the proportion of sulphur dioxide contained(*y*).

(*t*) S.R. and O., 1923, No. 509, Art. 7.

(*u*) S.R. and O., 1923, No. 1323 ; S.R. and O., 1927, No. 1093 ; and S.R. and O., 1943, No. 896.

(*v*) S.R. and O., 1923, No. 1323, Art. 7.

(*w*) Public Health (Preservatives, etc., in Food) Regulations, 1925 ; S.R. and O., 1925, No. 725, art. 11(2).

(*x*) By S.R. and O., 1925, No. 775 ; S.R. and O., 1926, No. 1557 ; S.R. and O., 1927, No. 577 ; and S.R. and O., 1940, No. 633.

(*y*) *Ibid*, Art. 11(1).

Officers of Customs and Excise may be authorised by the Commissioners of Customs and Excise, after consultation with the Minister of Health, to enforce the provisions of Part III of the Preservatives Regulations relative to the importation of articles of food(z). In addition, officers authorised by a port health authority, or the council of a local authority where the food is landed from a ship or aircraft in a place which is not within the jurisdiction of a port health authority, are empowered to execute the provisions of Part III of the Regulations(a). Such officers may take and submit samples of imported food to the public analyst(b).

It is an offence to import into England and Wales any cooked pickled meat intended for sale for human consumption, other than bacon and ham, which contains sodium or potassium nitrite in proportions exceeding two hundred parts per million calculated as sodium nitrite(c).

As to preservatives, etc., in food, see Chapter 6, *ante*, p. 177.

MARKING ORDERS UNDER THE MERCHANDISE MARKS ACTS.

Marking of imported food.—Section 2 of the Merchandise Marks Act, 1926, *infra*, enables Orders in Council to be made prohibiting the sale, or exposure for sale, of particular classes of imported foods, unless they are properly marked with an indication of the country of origin.

Section 2, Merchandise Marks Act, 1926.—*Power to require indication of origin in the case of certain imported goods.*

- (1) After an inquiry in relation to goods of any class or description has on a reference from the appropriate department been held by a committee appointed for the purposes of this Act and the report of the committee on the matter has been taken into consideration by the department, that department may, unless it appears to them that the trade of the United Kingdom or the trade generally of other parts of His Majesty's dominions with the United Kingdom would be prejudiced if imported goods of that class or description for use or consumption in the United Kingdom were prohibited to be sold unless they bear an indication of origin, make a representation to His Majesty that it is desirable that an order should be made under this section, and His Majesty in Council may thereupon, subject to the provisions of this Act, make an order prohibiting the sale, or the exposure for sale in the United Kingdom, of imported goods of that class or description unless they bear an indication of origin.
- (2) The sitting of a committee shall, while evidence is being taken, be open to the public unless the evidence relates to matters which are, in the opinion of the committee, of a confidential character.

(z) *Ibid*, Art. 8.

(b) *Ibid*, Art. 9(2).

(a) *Ibid*, Art. 9(1).

(c) *Ibid*, Art. 11(3).

- (3) No reference shall be made to a committee in respect of goods of any class or description unless there has been made to the department an application therefor which, in the opinion of the department, substantially represents the interests of either manufacturers, producers, dealers, traders, users, or consumers, or of any body of wage-earners.
- (4) Whenever a reference to a committee is made by a department under this section, notice thereof shall be published in the London, Edinburgh and Belfast Gazettes, and in such other manner as the department may deem suitable, and no inquiry in respect of such reference shall be begun by the committee until the expiration of twenty-eight days after the date of such publication.
- (5) If on an inquiry under subsection (1) of this section it appears to a committee to be desirable that any imported goods should bear an indication of origin at the time of importation, and the committee so reports to the appropriate department, that department unless, having regard to all the circumstances of the case, including the re-export trade of the United Kingdom in that class or description of goods, it considers such action undesirable, may make a representation to His Majesty that it is desirable that the goods should bear an indication of origin at the time of importation, and His Majesty may by Order in Council under this section (without prejudice to his powers under subsection (1) of this section) make provision accordingly, and if any such goods required by any such Order to bear an indication of origin at the time of importation do not at that time bear such an indication, they shall be deemed to be goods which are prohibited to be imported by virtue of section sixteen of the principal Act :

Provided that—

- (a) Subject to compliance with such conditions as to security for the re-exportation of the goods as the Commissioners of Customs and Excise may impose, an Order under this subsection shall not apply to goods imported for exportation after transit through the United Kingdom or by way of transshipment or to goods declared on importation to be for re-exportation ; and
 - (b) Nothing in this subsection shall be taken to be in derogation of anything contained in the said section sixteen.
- (6) A committee after hearing persons representing such interests as may appear to the committee to be substantially affected shall, from time to time, and as soon as may be practicable in each case after an inquiry under subsection (1) of this section make reports to the appropriate department specifying the classes or descriptions of imported goods, if any (being goods to which the committee consider that it is practically possible to apply an indication of origin effectively and without injury to the goods), with respect to which, in the opinion of the committee, an Order in Council ought to be made under this section, and the committee shall, if it reports that such goods should bear an indication of origin, recommend what should be the form of the indication of origin and in what manner it should be applied to the goods.
 - (7) Before any proceedings shall be taken on any report made by a committee in pursuance of this section, such report shall be published, and a copy of such report shall be laid before each House of Parliament, and notice of the making of such report.

shall be published in the London, Edinburgh and Belfast Gazettes and in such other manner as the Department may deem suitable.

(8) An Order in Council under this section shall specify in every case—

- (a) the manner in which the indication of origin is to be applied to the goods ; and
- (b) the date on which the Order is to come into force (not being a date earlier than three months from the date of the making of the Order, except in the case of an Order revoking a previous Order either entirely or as respects some of the goods to which that Order relates, or an Order made for amending a previous Order in consequence of a direction having been given with respect to that Order under the provisions of this Act relating to provisional exemptions) ; and
- (c) whether the goods are to bear an indication of origin at the time of importation or of exposure for sale wholesale,

and any such Order may contain such other provisions as appear to His Majesty to be necessary or expedient for carrying this section into effect.

The following Orders have been made covering the marking of the articles of food mentioned :—

Merchandise Marks (Imported Goods) No. 2	
Order, 1928(<i>d</i>)	.. .. . Gelatine
Merchandise Marks (Imported Goods) No. 3	
Order, 1928(<i>e</i>)	.. .. . Honey
	Fresh apples
Merchandise Marks (Imported Goods) No. 5	
Order, 1928(<i>f</i>)	.. .. . Currants, sultanas
	and raisins
	Eggs in shell
	Dried eggs
	Oat products (oat-
	meal, rolled oats,
	oatflour)
Merchandise Marks (Imported Goods) No. 4	
Order, 1929(<i>g</i>)	.. .. . Raw tomatoes
Merchandise Marks (Imported Goods) No. 5	
Order, 1930(<i>h</i>)	.. .. . Malt products
Merchandise Marks (Imported Goods) No. 8	
Order, 1931(<i>i</i>)	.. .. . Frozen and chilled
	salmon and sea-
	trout
Merchandise Marks (Imported Goods) No. 1	
Order, 1932(<i>k</i>)	.. .. . Butter
Merchandise Marks (Imported Goods) No. 3	
Order, 1934(<i>l</i>)	.. .. . Bacon and ham
Merchandise Marks (Imported Goods) No. 5	
Order, 1934(<i>m</i>)	.. .. . Dead poultry

(*d*) S.R. and O., 1928, No. 570.
 (*f*) S.R. and O., 1928, No. 1052.
 (*h*) S.R. and O., 1930, No. 566.
 (*k*) S.R. and O., 1932, No. 128.
 (*m*) S.R. and O., 1934, No. 301.

(*e*) S.R. and O., 1928, No. 571.
 (*g*) S.R. and O., 1929, No. 1180.
 (*i*) S.R. and O., 1931, No. 554.
 (*l*) S.R. and O., 1934, No. 299.

Merchandise Marks (Imported Goods) No. 6	
Order, 1934(<i>n</i>)	Maize starch
Merchandise Marks (Imported Goods) No. 7	
Order, 1934(<i>o</i>)	Meat
Merchandise Marks (Imported Goods) No. 4	
Order, 1935(<i>p</i>)	Salt
Merchandise Marks (Imported Goods) No. 4	
Order, 1939(<i>q</i>)	Margarine

The Marking Orders, in general, require the foods in question to be marked—

- 1—with the country of origin ; or
- 2—the word “ Foreign ” or the word “ Empire,” as the case may be.

Details of Marking Orders.

Emergency legislation.—The provisions of the Merchandise Marks Act, 1926, and the Marking Orders made thereunder, do not apply to essential imports, imported on Government account for the purposes of the war emergency(*r*) and the provisions of any such Orders may be abrogated or suspended by Orders made under the Defence (Patents, Trade Marks, etc.) Regulations, 1941(*r*). *Particulars of the effect of any Emergency Orders made with respect to Marking Orders are shown at the end of the summary of each Marking Order.*

Gelatine (S.R. and O., 1928, No. 570, Part V).—The indication of origin(s) must be printed, stamped, stencilled or otherwise painted or branded on the container or wrapper in which

(*n*) S.R. and O., 1934, No. 693.

(*o*) S.R. and O., 1934, No. 727 ; and see Merchandise Marks (Imported Goods) Exemption Direction (No. 4) Order, 1935 ; S.R. and O., 1935, No. 1053.

(*p*) S.R. and O., 1935, No. 682.

(*q*) S.R. and O., 1939, No. 753.

(*r*) Defence (Patents, Trade Marks, etc.) Regulations, 1941 ; S.R. and O., 1941, No. 1780.

(*s*) “ *Indication of origin* ” means, at the option of the person applying the indication, either—

(a) in the case of goods manufactured or produced in any foreign country, the word “ Foreign ” and in the case of goods manufactured or produced in a part of His Majesty’s Dominions outside the United Kingdom, the word “ Empire ” ; or

(b) a definite indication of the country in which the goods were manufactured or produced,

the indication being given, in either case, conspicuously :

Provided that, in the case of goods produced or manufactured in the United Kingdom which have undergone in any particular country abroad any treatment or process resulting in a substantial change in the goods, the indication of origin may at the option of the person applying it be given either by using in conjunction with the word “ Foreign ” or the word “ Empire,” as the case requires, words descriptive of that treatment or process or by a definite indication that the treatment or process was undergone in that particular country—sect. 10(1), Merchandise Marks Act, 1926 ; 19 Halsbury’s Statutes 905.

the gelatine is sold or exposed for sale (Art. 24). In the case of blends or mixtures consisting of or containing imported gelatine, the indication of origin must be in one of the following forms :—

- (a) (i) Where an imported ingredient is manufactured or produced in any foreign country, the form of the indication must be "Blended, partly foreign" or "Blended, foreign," as the case may be ;
- (ii) Where an imported ingredient is manufactured or produced in a part of the Dominions outside the United Kingdom, the form of the indication must be "Blended, Empire" ;
- (iii) Where the imported ingredients are manufactured or produced partly in a part of the Dominions outside the United Kingdom and partly in any foreign country, the form of the indication must be "Blended, Empire and foreign" ; or
- (b) "Blended" followed by a statement of the countries in which the imported ingredients were manufactured or produced (Art. 26).

The Order does not require gelatine to bear an indication of origin at the time of importation (Art. 29) ; nor does it apply to the sale of gelatine in quantities of 14 lbs. or less (Art. 25) ; neither does it apply to sales by wholesale unless the person exposing the gelatine for sale is not a wholesale dealer (Art. 27).

Honey (S.R. and O., 1928, No. 571, Part I).—The indication of origin must be printed, stencilled, stamped or branded on the container, or on a label securely attached thereto, indelibly and in a conspicuous manner, in plain block letters not less than one-twelfth of an inch in height, and not less than one-eighth of an inch in height when the greatest dimension(*t*) of the package exceeds six inches (Art. 2). In the case of blends or mixtures containing imported honey, the indication may, at the option of the person applying it, be either—

- (a) in the case of honey derived entirely from countries within the Empire, the word "Empire" ; and, in the case of honey derived entirely from foreign countries, the word "Foreign" ; or
- (b) a definite indication of all the countries of origin of the honeys forming the blend or mixture ; or
- (c) the words "Blended imported" ; provided that such indication must apply to any blend or mixture of honey, even though it contains honey produced in the United Kingdom (Art. 3).

The above provisions do not apply to exposures for sale wholesale if the person exposing the goods is a wholesale dealer (Art. 4).

(*t*) "*Greatest dimension*" means the height, length or breadth, whichever is the greatest, of a rectangular or approximately rectangular package and the height or maximum diameter, whichever is the greater, of a cylindrical, oval or conical package ; S.R. and O., 1928, No. 571, Art. 2.

Fresh apples (S.R. and O., 1928, No. 571, Part II).—The indication of origin must be marked indelibly and in a conspicuous manner as follows :—

- (a) On importation, on exposure for sale wholesale and on sale, by means of printing, stencilling, stamping or branding on each outer container, or on a label securely attached thereto, in letters not less than half an inch in height.
- (b) On exposure for sale by retail, by means of a show-ticket, clearly visible to intending purchasers, bearing the indication of origin in letters not less than half an inch in height (Art. 7).

The Order applies to exposure for sale wholesale whether the person exposing the apples is, or is not, a wholesale dealer (Art. 8), but it does not apply to sales of fresh apples in quantities of 14 lbs. or less (Art. 9).

Currants, sultanas and raisins (S.R. and O., 1928, No. 1052, Part I).—The indication of origin must be marked indelibly and in a conspicuous manner as follows :—

- (a) On importation, on exposure for sale wholesale and on sale, by means of printing, stencilling, stamping or branding on each outer container, or on a label securely attached thereto, in letters not less than half an inch in height.
- (b) On exposure for sale by retail—
 - (i) in the case of currants, sultanas or raisins not pre-packed for sale by retail either on the premises where they are exposed for sale or otherwise, by means of a show-ticket, clearly visible to intending purchasers, bearing the indication of origin in letters not less than half an inch in height ;
 - (ii) in the case of currants, sultanas or raisins pre-packed for sale by retail, except in the case of sales covered by Art. 3, *infra*, by means of printing on or printed labels affixed to each package bearing the indication of origin in plain block letters not less than one-twelfth of an inch in height when the greatest dimension of the package does not exceed six inches, and not less than one-eighth of an inch in height when the greatest dimension of the package exceeds six inches (Art. 2).

The Order does not require imported currants, sultanas or raisins to bear an indication of origin—

- 1—On importation as samples not exceeding 1 lb. in weight ;
- 2—On exposure for sale by retail in packages made up for sale on the premises of a retailer ; or
- 3—On sale when sold in quantities not exceeding 14 lbs. in weight (Art. 3).

The provisions of the Marking Order relative to the marking of an indication of origin have been abrogated by the Dried Fruits (Control and Maximum Prices) Order, 1943(u) (see ante, p. 346).

Eggs in shell (S.R. and O., 1928, No. 1052, Part II).—The indication of origin must be conspicuously and durably marked

in ink on the shell of each imported egg in letters not less than two millimetres in height (Art. 6). It should be noted that the provisions of section 4(2) of the Agricultural Produce (Grading and Marking) Act, 1928 (see *post*, p. 628), apply to eggs subject to the provisions of the Marking Order.

The provisions of the Marking Order relating to eggs in shell are largely abrogated (v) (see ante, p. 346).

Dried eggs (S.R. and O., 1928, No. 1052, Part III).—The indication of origin must be marked indelibly and in a conspicuous manner as follows :—

- 1—On importation, by means of printing, stencilling, stamping or branding on each outer container, or on a label securely attached thereto, in letters not less than half an inch in height.
- 2—On exposure for sale, wholesale or retail, and on sale, except in accordance with the provisions of Article 10, *infra*, by means of printing, etc., on each container, or on a label securely attached thereto, in plain block letters not less than one-twelfth of an inch in height when the greatest dimension of the package does not exceed six inches and not less than one-eighth of an inch in height when the greatest dimension exceeds six inches (Art. 9).

The Marking Order does not apply to imported dried eggs when sold or exposed for sale by retail otherwise than in packages which are made up before reaching the retailer (Art. 10).

Cat products (S.R. and O., 1928, No. 1052, Part IV).—The indication of origin must be marked indelibly and in a conspicuous manner as follows :—

- 1—On importation, on exposure for sale wholesale and on sale, by means of printing, etc., on each outer container, or on a label securely attached thereto, in letters not less than half an inch in height.
- 2—On exposure for sale by retail—
 - (i) in the case of oat products not pre-packed for sale by retail, by means of a show-ticket, clearly visible to intending purchasers, bearing the indication of origin in letters not less than half an inch in height ;
 - (ii) in the case of oat products, pre-packed before importation for sale by retail, by means of printing or stamping on each package, or on a label securely attached thereto, in plain block letters not less than one-twelfth of an inch in height when the greatest dimension of the package does not exceed six inches and not less than one-eighth of an inch in height when the greatest dimension of the package exceeds six inches ; and
 - (iii) in the case of oat products pre-packed after importation, for sale by retail, either by means of a show-ticket, as in (i) above, or by means of marking on each package, as in (ii) above, at the option of the person applying the indication (Art. 15).

The marking of blends or mixtures of oat products must be carried out in a similar manner to that prescribed for honey (see *ante*, p. 347) (Art. 16).

The provisions of the Marking Order with respect to oat products do not apply in the case of sales in quantities of 14 lbs. or less (Art. 17).

Raw tomatoes (S.R. and O., 1929, No. 1180).—The indication of origin must be marked indelibly and in a conspicuous manner as follows :—

- 1—On importation, on exposure for sale wholesale and on sale, by means of printing, etc., on each outer container, or on a label securely attached thereto, in letters not less than half an inch in height ;
- 2—On exposure for sale by retail, by means of a show-ticket, clearly visible to intending purchasers, bearing the indication of origin in letters not less than half an inch in height (Art. 2).

The Order applies on exposure for sale wholesale whether the person exposing the goods is or is not a wholesale dealer (Art. 3), but the Order does not apply to sales of raw tomatoes in quantities of 14 lbs. or less (Art. 4). It has been held, however, that it is an offence to expose for sale quantities of less than 14 lbs. without the required indication of origin(*w*).

Malt products(*x*) (S.R. and O., 1930, No. 566).—The indication of origin must be printed, etc., on the container, or on a label securely attached thereto, indelibly and in a conspicuous manner, in plain block letters not less than one-twelfth of an inch in height when the greatest dimension of the container does not exceed six inches, not less than one-eighth of an inch when the greatest dimension of the container exceeds six inches but does not exceed fifteen inches, and not less than half an inch when the greatest dimension exceeds fifteen inches (Art. 3). The Order applies to exposures for sale wholesale whether the person exposing the goods is or is not a wholesale dealer (Art. 4).

Frozen and chilled salmon(*y*) *and sea-trout*(*z*) (S.R. and O., 1931, No. 554).—The indication of origin must be marked as follows :—

- 1—On exposure for sale wholesale and on sale, by means of a printed or stamped paper or parchment label attached or applied to each fish, bearing the indication of origin in legible and conspicuous lettering.

(*w*) *Davenport v. Johnston* (1937), 101 J.P. 259 ; Digest Supp.

(*x*) "*Malt products*" means malt extract, malt flour, malt extract and cod-liver oil, and malt extract blended with any other product so that malt extract comprises more than 50 per cent. by volume of the whole—S.R. and O., 1930, No. 566, Art. 1.

(*y*) "*Salmon*" means all fish of the species *Salmo salar* and of the genus *Oncorhynchus* ; S.R. and O., 1931, No. 554, Art. 1.

(*z*) "*Sea-trout*" includes sea-trout and salmon-trout and all fish sold or exposed for sale or offered for sale as trout, sea-trout or salmon-trout ; *ibid*.

- 2—On exposure for sale by retail, by means of a label or show-ticket placed on, or in close proximity to the fish or portion of fish to which it relates so as to be clearly visible to intending purchasers, bearing the indication of origin in lettering not less than half an inch in height (Art. 3).

The Order applies to the exposure for sale wholesale whether the person exposing the goods is or is not a wholesale dealer (Art. 4). The Order does not apply to *sales* of portions of any fish (Art. 5) but it should be noted that portions of fish *exposed for sale* must be marked.

Butter (S.R. and O., 1932, No. 128).—The Order applies to all butter or mixtures of butter which consist of or contain imported butter (Art. 2) and the indication of origin must be marked indelibly and in a conspicuous manner as follows :—

- 1—In the case of butter wrapped or packed ready for retail sale—
On sale or exposure for sale either wholesale or by retail, by means of printing or stamping on the outside of each package or on a label securely attached to the outside of each package or visible through the wrapper, in plain block letters not less than one-twelfth of an inch in height.
- 2—In the case of butter in bulk, that is to say, butter not wrapped or packed ready for retail sale—
 - (i) on sale and on exposure for sale wholesale, by means of printing, etc., on each outer container, or on a label securely attached thereto, in letters not less than half an inch in height ;
 - (ii) on exposure for sale by retail by means of a show-ticket clearly visible to intending purchasers bearing the indication of origin in letters not less than half an inch in height (Art. 3).

The requirement of marking on sale does not apply to butter taken in the presence of the purchaser from butter in bulk which is properly marked in accordance with paragraph (2)(ii) above (Art. 4).

The indication of origin, in the case of blends or mixtures of butter, must be shown as follows :—

- 1—the word “ Empire ” if the whole of the butter included in the blend was produced within the Empire (whether or not some part of it was produced in the United Kingdom), or the word “ Foreign ” if the whole of the butter included in the blend was produced in foreign countries ; or
- 2—the expression “ Partly Empire and partly foreign ” if part of the butter included in the blend was produced in His Majesty’s Dominions outside the United Kingdom and part was produced in foreign countries, whether or not the blend contains also butter produced in the United Kingdom ; or
- 3—the expression “ Partly foreign ” if the blend consists of foreign butter and also butter produced in the United Kingdom ; or
- 4—a definite indication of all the countries of origin of the butters forming the blend ; or
- 5—the words “ Including imported butter ” (Art. 5).

The Order applies to exposures for sale by wholesale whether the person exposing the butter is or is not a wholesaler (Art. 6).

The provisions of the Marking Order relative to the marking of an indication of origin have been abrogated(a), provided that "National Butter," or butter blended with it, must be marked in the manner prescribed (see ante, p. 346).

Bacon and ham (S.R. and O., 1934, No. 299).—In the case of bacon or ham with the rind upon it the indication of origin must be marked as follows :—

- 1—each side of bacon shall bear the indication of origin branded or stamped durably and conspicuously on the rind in block letters not less than three-quarters of an inch in height and not more than one-twelfth of an inch apart, in two lines of letters joining on the gammon hock and extending from the gammon hock to (a) the end of the forehock and (b) the end of the top collar, in positions corresponding to the positions of the two lines A to B and C to D shown in the diagram in the Schedule to the Order ; so that the indication of origin shall appear on all the standard joints or cuts ;
- 2—each ham or separate portion of a ham or of a side of bacon shall be marked on the rind in the manner prescribed in 1 above, and in the same relative position as if such ham or portion of a ham or of a side of bacon had formed part of a complete side of bacon which had been so marked (Art. 2).

The marking of sides of bacon is shown in a diagram in the Schedule to the Order. The requirement of marking on exposure for sale or on sale any separate portion of a ham or of a side of bacon which has its rind upon it does not apply to any piece of imported bacon or ham with the rind upon it, which, owing to the manner in which the piece was cut from the joint, does not bear an indication of origin (Art. 3). In the case of bacon or ham from which the rind has been removed before importation the indication of origin must be marked as follows :—

- (A)—On importation—by means of either (i) stamping or branding on the bacon or ham in the manner prescribed in Article 2 (1) or 2 (2) of the Order in the case of bacon or ham which has its rind upon it, or (ii) printing, stencilling, stamping or branding indelibly and in a conspicuous manner on each container, wrapper or other covering in block letters not less than half an inch in height ;
- (B)—On exposure for sale wholesale and on sale either wholesale or by retail—as in (A) above ;
- (C)—On exposure for sale by retail—either (i) as in (A) above, or (ii) by means of a label or show-ticket prominently displayed on or in close proximity to the bacon or ham to which it relates, so as to be clearly visible to intending purchasers, bearing the indication of origin in letters not less than half an inch in height (Art. 4).

(a) S.R. and O., 1943, No. 1765.

The requirement of marking bacon and ham from which the rind has been removed, either before or after importation, does not apply—

- 1—on sale either wholesale or by retail in any case in which the indication of origin is clearly and conspicuously stated on an invoice or delivery note ; and
- 2—in the case of a sale of bacon or ham which is marked in accordance with paragraph (C) (ii) above to a purchaser who is present at the time of sale at the shop, etc., on which the bacon or ham is exposed for sale by retail (Art. 5).

The Order does not apply to bacon or ham which has been cooked, canned or potted prior to importation (Art. 6), but it does apply to wholesale sales whether the seller is a wholesaler or not (Art. 7).

The provisions of the Marking Order relative to the marking of an indication of origin have been abrogated by the Bacon (Control and Prices) Order, 1944(b) (see ante, p. 346).

*Dead poultry(c) (S.R. and O., 1934, No. 301).—*The indication of origin must be marked legibly and durably in a conspicuous manner in the case of each bird as follows :—

On a seal or disc of a permanent character and not less than two centimetres in diameter securely attached to one of the wings of each bird by a durable attachment passing through a circular hole not less than one centimetre in diameter punched or stamped through the web of the wing ; and in each case the indication of origin must be printed, stamped or embossed on the seal or disc in letters not less than one and a half millimetres in height (Art. 2).

The Order applies to wholesale sales whether the seller is a wholesaler or not (Art. 3).

The provisions of the Marking Order relative to the marking of an indication of origin have been abrogated by the Poultry (Control and Maximum Prices) Order, 1943(d) (see ante, p. 346).

*Maize starch (including maize starch cornflour) (S.R. and O., 1934, No. 693).—*The indication of origin must be stamped, etc., on each bag, sack, box, barrel, keg, bottle, carton or other container in which the goods are imported, sold or exposed for sale, or on a label securely affixed thereto (Art. 2). The Order does not apply to maize starch on importation when imported as samples by parcel post, or on sale or exposure for sale when the total quantity sold or exposed for sale does not exceed 14 lbs. in weight unless pre-packed (Art. 3). The Order applies to wholesale sales whether the seller is a wholesaler or not (Art. 5).

(b) S.R. and O., 1944, No. 164.

(c) " *Poultry* " means ducks, fowls (excluding guinea-fowl), geese or turkeys, whether dressed or undressed—S.R. and O., 1934, No. 301.

(d) S.R. and O., 1943, No. 1614.

Meat (S.R. and O., 1934, No. 727).—The Order applies to chilled beef, frozen mutton, frozen lamb, frozen pork, boneless beef, boneless veal, salted beef, salted pork or edible offals(e).

The indication of origin must be branded or stamped, stencilled or printed in ink or stain, durably and conspicuously, in letters which must, except where otherwise specifically provided, be not less than half an inch in height (Art. 2). The indication of origin required on importation must be applied as follows :—

1—In the case of chilled beef, each side of chilled beef shall bear the indication of origin on the outer side in a continuous series of words in three columns extending longitudinally—

- (i) from the hock joint to the neck, in a line passing over the round, aitchbone and rump and then continuing at a distance of two inches from the shin bone to the neck ; and
- (ii) from the hind-leg or shin to the fore-shin in a line drawn down the middle of the side ; and
- (iii) from the fore-rib or crop to the sticking in a line drawn midway between the lines specified in (i) and (ii),

as shown in the diagram, Figure I, in the Schedule to the Order (Art. 3 (I)) :

Provided that, where the name of the country of production is applied to a side of chilled beef, the requirements of this paragraph shall be deemed to be complied with if, in any case where such name comprises more than one word, such words are placed vertically one beneath the other instead of in a continuous horizontal line.

Provided, however, that nothing herein contained shall apply to a case where words or letters are used in connection with the indication of origin which do not actually form part of, or which are not essential for the purpose of specifying, the name of the country of production(f).

2—In the case of frozen mutton and frozen lamb, each carcase shall bear the indication of origin on the outer side of the leg of each hind-quarter, and on the outer side of the best-end and shoulder of each fore-quarter, composing three marks on each side of such carcase in the positions shown in the diagram, Figure II, in the Schedule to the Order (Art. 3 (II)).

3—In the case of frozen pork, each carcase shall bear the indication of origin on each side of the carcase on the outer side of the leg, loin, fore-end (spare-rib and blade-bone) and hand-and-spring, composing four marks on each side in the positions shown in the diagram, Figure III, in the Schedule to the Order (Art. 3 (III)).

4—Except where any portion of a side of chilled beef or of a carcase of frozen mutton or frozen lamb or frozen pork is one of the forms of meat specified in the next following paragraph of the Order, each portion of any such side or carcase shall bear such

(e) "*Edible offal*" means the following edible offals, whether fresh, chilled or frozen, of carcasses of cattle, sheep and pigs:—livers, lungs, melts or spleens, skirts, tails, hearts, kidneys, sweetbreads, tongues, tripes and heads (including cheeks and brains)—S.R. and O., 1934, No. 727, Art. 5.

(f) Merchandise Marks (Imported Goods) No. 7, Order, 1934, Amendment Order, 1936 ; S.R. and O., 1936, No. 176, Art. 1.

markings indicative of origin as it would have borne if it had formed part of a complete side or carcase of such meat which had been marked in the manner hereinbefore in this Article prescribed (Art. 3 (IV)) :

Provided that these provisions do not apply to loins of frozen pork from which the skin has been removed and shoulder cuts of frozen pork from which the skin has been removed(*g*).

- 5—In the case of boneless beef, boneless veal, salted beef, salted pork and edible offals the indication of origin must be applied to each container or package (Art. 3 (V)) ; and this applies also to loins of frozen pork from which the skin has been removed and shoulder cuts of frozen pork from which the skin has been removed(*h*).

The indication of origin required on sale and exposure for sale, whether wholesale or retail, must be applied as follows :—

- 1—In the case of chilled beef, frozen mutton, frozen lamb and frozen pork, in like manner as on importation ; provided that where any joint or cut of such meat did not on importation or does not by reason of the method of preparation for market in the ordinary course of trade bear any marking such as is mentioned in Article 3 of the Order, the indication of origin shall be applied by means of a ticket or label placed on each portion of meat (Art. 4 (I)) :

Provided that these provisions do not apply to loins of frozen pork from which the skin has been removed and shoulder cuts of frozen pork from which the skin has been removed(*g*).

- 2—In the case of boneless beef, boneless veal, salted beef, salted pork and edible offals—

(a) in like manner as on importation ; or

(b) by means of a ticket or label placed on each portion of meat or each container or package of meat (Art. 4 (II)),

and this applies also to loins of frozen pork from which the skin has been removed and shoulder cuts of frozen pork from which the skin has been removed(*h*).

- 3—In the case of frozen beef and frozen veal, in like manner as is hereinbefore specified in the case of boneless beef, boneless veal, salted beef, salted pork and edible offals (Art. 4 (III)).

Diagrams showing the method of marking are given in the Schedule to the Order. The Order applies to wholesale sales whether the seller is a wholesaler or not (Art. 6). A butcher was convicted of an offence against the Order on selling a pound of steak from a large rump of Argentine beef so placed on the bench that the prescribed mark of origin was on the underneath side and could not be seen by the customer. He sold the meat at the price of English meat(*i*).

The Marking Order is largely abrogated by the Imported Meat (Marking) Order, 1941(k) (see *ante*, p. 346). Under this Order no person may sell or expose for sale by retail any imported

(*g*) *Ibid*, Art. 2.

(*h*) *Ibid*, Art. 3.

(*i*) *Robinson v. Hammett (R. C.), Ltd.*, [1938] 1 All E. R. 191 ; Digest

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(*k*) S.R. and O., 1941, No. 1204.

meat(*l*) unless a ticket or label bearing in clear lettering the word " Imported " is placed on or attached to each portion of such meat sold or exposed for sale : provided that—

- 1—the requirements of this Article with regard to the exposure for sale of imported meat shall be deemed to be complied with where a tray, slab, or rail contains imported meat only, and a ticket or label bearing in clear lettering the word " Imported " is prominently displayed on that tray, slab, or rail, clearly visible to intending purchasers and adequately identifying the meat to which it applies ; and
- 2—the requirements of this Article with regard to the sale of imported meat shall be deemed to be complied with—
 - (a) where the word " Imported " is clearly and conspicuously stated on an invoice or delivery note attached to or accompanying the meat ;
 - (b) where a sale of any portion of imported meat which is clearly marked on exposure for sale in accordance with the provisions of this Article is made to a purchaser who is present at the time of sale at the shop, place or premises on which that portion of meat is exposed for sale (Art. 2).

Salt(m) (S.R. and O., 1935, No. 682).—The indication of origin must be durably applied to any wrapper or container in which the salt is sold or exposed for sale or to a label securely attached or affixed thereto (Art. 2). The Order applies to wholesale sales whether the seller is a wholesaler or not (Art. 4), but it does not require goods to which it applies to bear an indication of origin at the time of importation (Art. 5).

Margarine(n) (S.R. and O., 1939, No. 753).—The indication of origin must be marked indelibly and in a conspicuous manner as follows :—

- 1—In the case of margarine wrapped or packed ready for retail sale—

On importation, and on sale or exposure for sale, whether wholesale or by retail, by means of printing or stamping on the outside of each retail packet, in plain block letters not less than one-twelfth of an inch in height, in close proximity to, and in letters of the same colour as, the word " Margarine " required by law to be applied thereto.

- 2—In the case of margarine in boxes, trays or other containers—

On importation, and on sale or exposure for sale wholesale, by means of printing, stamping, branding or stencilling in plain block letters of not less than half an inch in height on the top (if any) and the bottom and sides of each container in close proximity to, and in letters of the same colour as, the word " Margarine " required by law to be applied thereto.

(*l*) " Meat " means imported chilled beef, frozen beef, frozen mutton, frozen lamb, frozen pork, frozen veal, boneless beef, boneless veal, salted beef, salted pork and edible offals—S.R. and O., 1941, No. 1204.

(*m*) " Salt " includes, in addition to other salt, all salt generally known as table-salt, whether or not it contains a proportion of ingredients other than sodium chloride—S.R. and O., 1935, No. 682, art. 3.

(*n*) " Margarine " has the meaning assigned to it in sect. 100, Food and Drugs Act, 1938—see *ante*, p. 198.

3—In the case of margarine in bulk, that is to say margarine not wrapped or packed ready for retail sale—

On exposure for sale by retail by means of a show-ticket bearing the indication of origin in letters not less than half an inch in height or by printing, stamping, branding or stencilling the indication in letters not less than half an inch in height on any label marked "Margarine" required by law to be attached to margarine when exposed for sale, the indication in each case to be clearly visible to intending purchasers (Art. 2).

The requirement of marking on retail sale does not apply in the case of margarine taken from margarine in bulk clearly visible to the purchaser and which is properly marked in accordance with paragraph 3 above (Art. 3). The Order applies to wholesale sales whether the seller is a wholesaler or not (Art. 4).

Exemptions from provisions of Marking Orders.—Produce from the Channel Islands or Isle of Man may by Order be exempted from the provisions of the Marking Orders(*o*), but the only Order made so far exempts food-stuffs from the Isle of Man(*p*), consequently produce from the Channel Islands is subject to the Marking Orders.

Provisional exemption from the operation of a Marking Order may be given in accordance with section 3 of the Merchandise Marks Act, 1926, *infra*.

Section 3, Merchandise Marks Act, 1926.—Power to grant provisional exemption from Order in Council.

- (1) If, where an Order in Council has been made under this Act with respect to any goods, it is shown to the satisfaction of the appropriate department by persons appearing to the department to have a substantial interest in the matter that the application of the provisions of the Order, or of some of those provisions, to any particular class or description of those goods has caused, or is likely to cause, injury or hardship to the said persons, or any of them, the department may direct that the Order, or any particular provisions of the Order, shall cease to apply to goods of that class or description or shall apply to such goods subject only to such modifications and conditions as the department think fit, and the Order shall, while the direction is in force, have effect subject thereto.
- (2) Immediately after a direction has been given under this section the appropriate department shall cause notice thereof to be published in the London, Edinburgh and Belfast Gazettes, and in such other manner as the department may deem suitable, and shall refer to a committee for consideration the question whether the Order with respect to which the direction has been given should be amended either in accordance with the terms of the direction or otherwise with respect to the goods in question.

(*o*) Sect. 13(4), Merchandise Marks Act, 1926; 19 Halsbury's Statutes 907.

(*p*) S.R. and O., 1927, No. 505.

- (3) A direction under this section may at any time be withdrawn by the appropriate department, and shall not in any case continue in force after the date on which any amending Order in Council made on the report of the committee to which the matter in question has been referred under the last preceding subsection comes into operation or after the expiration of twelve months from the date on which the direction was given, whichever date is the earlier.

Enforcement of Marking Orders.—Food and drugs authorities (see *ante*, p. 19) are empowered to enforce the provisions of the various Marking Orders(*q*), and authorised officers of those authorities are empowered to enter premises and take samples. The sampling officer must inform the vendor or his agent, at the time of sampling, that the sample has been obtained in pursuance of the Act of 1926. If required to do so, the sampling officer must pay for the sample and divide it into two parts, leaving one part with the vendor(*r*), but the procedure laid down in section 70(1) of the Food and Drugs Act, 1938 (see *ante*, p. 55), with regard to the division of samples, does not apply in relation to proceedings under the Merchandise Marks Act, 1887(*s*).

Legal proceedings.—Proceedings in respect of offences against the Marking Orders are taken before a court of summary jurisdiction, and such offences become offences against the principal Act, the Merchandise Marks Act, 1887(*t*), with which the Act of 1926 is incorporated(*u*). The court may impose a fine not exceeding £5 for a first offence, or £20 and the forfeiture of the goods for a subsequent offence(*v*). An appeal may be made to quarter sessions in respect of a conviction in the magistrates' court(*w*).

Offences.—It is an offence under the Act of 1926(*x*), to sell, expose for sale or distribute by way of advertisement any goods in contravention of a Marking Order. An offence is committed if imported goods to which a Marking Order applies, are advertised or offered for sale under a specific designation unless the advertisement or offer indicate an indication of the country of origin(*y*). It is also an offence to remove, alter or obliterate a mark of origin unless it can be proved that this was not done for the purpose of concealing

(*q*) Sect. 9, Merchandise Marks Act, 1926 ; 19 Halsbury's Statutes 904.

(*r*) *Ibid* ; and as to sampling generally, see Chapter 4, *ante*, p. 50.

(*s*) *Evans v. Clinical Products, Ltd.*, [1943] 1 All E.R. 222.

(*t*) 19 Halsbury's Statutes 832.

(*u*) Sect. 13(1), Merchandise Marks Act, 1926 ; 19 Halsbury's Statutes 907.

(*v*) *Ibid*, sect. 5(1) ; 19 Halsbury's Statutes 902.

(*w*) Sect. 2(5), Merchandise Marks Act, 1887 ; 19 Halsbury's Statutes 834.

(*x*) Sect. 5(2) ; 19 Halsbury's Statutes 902.

(*y*) *Ibid*.

the country of origin(z). It is a good defence for any person charged to prove that having taken all reasonable precautions against committing an offence he had no reason to suspect that the goods in question were subject to the provisions of a Marking Order and that on demand by the prosecutor he gave all information in his power with respect to the persons from whom he obtained the goods, or that otherwise he had sold innocently(a).

If an employer has used due diligence to enforce compliance with the provisions of the Marking Order, he is entitled to bring before the court any other person (*e.g.* an employee) who he alleges is responsible for the offence. The court, if satisfied that the employer is not guilty may dismiss him from the case and convict the other person. The employer must give not less than three days' notice to the prosecutor of his intention to bring another person before the court(b).

(z) *Ibid*, sect. 8 ; 19 Halsbury's Statutes 904.

(a) *Ibid*, sect. 5(5) ; 19 Halsbury's Statutes 903.

(b) *Ibid*, sect. 6 ; 19 Halsbury's Statutes 903.

PART IV.

MILK AND DAIRIES.

CHAPTER 14.

MILK PRODUCTION AND DISTRIBUTION.

INTRODUCTION.

It has already been pointed out (see *ante*, p. 120) that owing to its nature, milk is especially liable to be adulterated by the addition of adulterants or the removal of some of its natural constituents. In the same way milk is also easily contaminated through lack of adequate attention to methods of production, transport, handling and distribution. Such contamination may affect the keeping quality of the milk or render it liable to cause disease or illness in persons consuming it.

This chapter deals with the production, distribution, etc., of milk from the point of view of keeping quality and freedom from pathogenic organisms. As to adulterated milk, see Chapter 5 (*ante*, p. 111); milk and disease, see Chapter 15 (*post*, p. 397); designated milk, see Chapter 16 (*post*, p. 410); and milk unfit for human consumption, Chapter 8 (*ante*, p. 225).

Government milk policy.—During the war emergency the Government devoted considerable attention to the organisation of the milk industry with a view to improving the marketing arrangements and the conditions under which milk is produced, transported and distributed to the consumer. Although some of the changes brought into operation between 1939–45 are of a purely temporary nature and may be expected to be abolished when conditions become more normal, others will undoubtedly remain. These latter, when brought fully into operation, will result in fundamental changes in the administrative arrangements for the control of the milk industry.

The more immediate war emergency changes were outlined in the Government White Paper(a), "*Memorandum on Milk Policy*," issued in May 1942. Briefly, arrangements were made for the rationalisation of milk deliveries, so as to avoid retailers overlapping, with consequent wastage of labour and transport. It was also arranged that the price to be paid to producers should vary according to the quality of the milk as revealed by a test to be carried out at regular intervals. The policy of rationalising retail milk distribution has been proceeded with in all urban areas with populations of over 10,000, but, as this is a matter which is of little concern to sanitary officers,

(a) Cmd. 6362.

the details of the scheme are omitted. On the other hand, the scheme for the payment of milk on a quality basis has not yet been put into operation. The scheme for the testing of milk—the National Milk Testing and Advisory Scheme—is dealt with in detail on pp. 391 *et seq.*, *post*.

A further White Paper(b), “*Measures to Improve the Quality of the Nation’s Milk Supply*,” was issued in July 1943, which forecast far-reaching changes in milk and dairies’ administration. The Government’s policy, outlined in the White Paper, may be summarised as follows :—

- 1—Achievement of a sound breeding policy by means of a long-term programme for a general up-grading of the national dairy herd ;
- 2—Veterinary inspection of all dairy herds at least once a year ;
- 3—Transfer of powers of local authorities with regard to the supervision and control of milk production to the Minister of Agriculture and Fisheries ; and
- 4—The restriction on the sale of milk by retail in specified areas, unless either it is—
 - i—heat treated as defined by Order (see *post*, p. 441) ;
 - ii—lawfully sold as Tuberculin Tested milk (see *post*, p. 418) ; or
 - iii—Accredited milk (see *post*, p. 426) sold by a retailer who sells the milk of a single accredited herd.

In order to implement the above policy the appropriate provisions of the Act of 1938 were modified by the Food and Drugs (Milk and Dairies) Act, 1944(c)—in this chapter referred to as “the Act of 1944”—*but the Act does not come into operation until a date to be appointed by order of the Minister of Health(d)*. In this chapter, therefore, it has been necessary to refer to the law as it now stands in the Act of 1938, together with the provisions of the Act of 1944 which will, in due course, supersede the 1938 Act provisions. In the meanwhile, care must be taken to distinguish the procedure laid down in the two statutes.

Definition of “milk.”—There are a number of definitions of “milk” contained in the Act of 1938 and various Regulations made thereunder, including the following :—

- i—Any reference to milk in the Act of 1938 must be construed as including a reference to cream and to separated milk, but not as including a reference to dried milk or to condensed milk(e) ;
- ii—The expression “milk” for the purposes of Regulations made under section 20 of the Act of 1938 (see *post*, p. 362) means milk intended for sale or sold for human consumption, or intended for manufacture into products for sale for human consumption(f) ;

(b) Cmd. 6454.

(c) 37 Halsbury’s Statutes 299.

(d) *Ibid.*, sect. 9(2) ; 37 Halsbury’s Statutes 305.

(e) Sect. 100(2)(a), Food and Drugs Act, 1938 ; 31 Halsbury’s Statutes 316.

(f) *Ibid.*, sect. 20(1) ; 31 Halsbury’s Statutes 266.

- iii—"Milk" means milk intended for sale for human consumption or for use in the manufacture of products for sale for human consumption, and includes cream, skimmed milk and separated milk(g).

MILK AND DAIRIES REGULATIONS.

Power to make regulations.—The Minister of Health is empowered by section 20 of the Act of 1938, *infra*, to make milk and dairies regulations—

Section 20, Food and Drugs Act, 1938.—Milk and Dairies Regulations.

- (1) The Minister may make regulations (in this Act referred to as "Milk and Dairies Regulations") for all or any of the purposes mentioned in any of the following paragraphs, that is to say—
- (a) for the registration of persons carrying on, or proposing to carry on, the trade of a dairyman and the registration of dairies, and prohibiting any person from carrying on the said trade unless he and any premises used by him as a dairy are duly registered ;
 - (b) for the inspection of dairies and of persons in or about dairies who have access to the milk, or to the churns or other milk vessels ;
 - (c) with respect to the lighting, ventilation, cleansing, drainage and water supply of dairies ;
 - (d) for securing the cleanliness of churns and other milk vessels and appliances ;
 - (e) prescribing the precautions to be taken for protecting milk against infection or contamination ;
 - (f) for preventing danger to health from the sale of infected, contaminated or dirty milk, and in particular for prohibiting the supply or sale of milk suspected of being infected ;
 - (g) imposing obligations on dairymen and their employees in regard to cases of infectious illness ;
 - (h) regulating the cooling, conveyance and distribution of milk ;
 - (i) with respect to the labelling, marking or identification, and the sealing or closing of churns and other vessels used for the conveyance of milk, the labelling of vessels in which milk is sold or offered or exposed for sale or delivered, and the display of the vendor's name and address on any stall, or any cart, barrow or other vehicle, from which milk is sold or delivered ;
 - (j) in cases where no express provision is made by this Act prohibiting or restricting—
 - (i) the addition of any substance to, or the abstraction of fat, or any other constituent, from milk ;
 - (ii) the sale of milk to which any such addition, or from which any such abstraction, has been made, or which has been otherwise artificially treated ;
 - (k) for preventing danger to health from the importation of milk.

In this subsection the expression "milk" means milk intended for sale or sold for human consumption, or intended for manufacture into products for sale for human consumption.

- (2) Regulations made under paragraph (i) or paragraph (j) of the preceding subsection shall not apply in relation to cream in so far as they are made for any purpose for which regulations with respect to cream may be made under paragraph (b) or paragraph (c) of subsection (1) of section 8 of this Act.
- (3) Regulations made under this section may be general regulations or regulations limited to a specified area.

The definition of "milk" in subsection (1), *supra*, must be read in conjunction with that contained in section 101(2) of the Act of 1938, so that milk and dairies regulations may be made with respect to milk, cream and separated milk intended for sale or sold for human consumption or intended for manufacture into products for sale for the food of man.

The provisions of section 92 of the Act of 1938 (see *ante*, p. 4) apply to milk and dairies regulations made under section 20, *supra*.

The principal Regulations in force at present are contained in the Milk and Dairies Order, 1926(*h*), which was made under the repealed provisions of the Milk and Dairies (Consolidation) Act, 1915(*i*) ; the Order has been kept in force(*k*). The Order, together with the Amendment Order of 1938(*l*) and the Provisional Regulations of 1943(*m*), may now be cited as the Milk and Dairies Regulations, 1926 to 1943(*n*).

Offences under the Milk and Dairies Order, 1926.—A person who is found guilty of an offence under the Order of 1926 is liable to a fine not exceeding £20, and in the case of a subsequent offence, to a fine not exceeding £100 or to imprisonment for a term not exceeding three months, or to both fine and imprisonment(*o*).

Duty to make provisions of Order known.—It is the duty of every cowkeeper and dairyman to take all practicable steps to make the provisions of the Milk and Dairies Regulations known to every person in or about any registered premises in his occupation so far as such provisions impose any duties or restrictions on such person and so far as they relate to the processes carried out by such person(*p*).

Provisions of the Act of 1944.—When the Act of 1944 comes into operation (see *ante*, p. 361) section 20 of the Act

(*h*) S.R. and O., 1926, No. 821.

(*i*) 8 Halsbury's Statutes 864.

(*k*) Sect. 101, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 316.

(*l*) S.R. and O., 1938, No. 217.

(*m*) P.R. and O., 1943, 21st May, 1943 ; and see *post*, p. 383.

(*n*) *Ibid*, Art. 1.

(*o*) Sect. 79, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 303 ; and see *ante*, p. 9, as to legal proceedings generally.

(*p*) Art. 4, Milk and Dairies Order, 1926 ; S.R. and O., 1926, No. 821.

of 1938 (see *ante*, p. 362) will be amended in accordance with section 1 of the Act of 1944, *infra*.

Section 1, Food and Drugs (Milk and Dairies) Act, 1944.—Amendment of section 20 of principal Act.

- (1) The power of making Milk and Dairies Regulations under section twenty of the principal Act shall, instead of being exercised by the Minister of Health, be exercised jointly by that Minister and the Minister of Agriculture and Fisheries.
- (2) Regulations made under paragraph (a) of subsection (1) of the said section twenty for the registration of dairies, and of persons carrying on, or proposing to carry on, the trade of dairymen, shall provide—
 - (a) for the registration by the Minister of Agriculture and Fisheries of dairy farms, and of persons carrying on, or proposing to carry on, the trade of dairy farmer ;
 - (b) for the refusal of any such registration by that Minister if in his opinion, having regard to conditions existing at the premises to be registered, the regulations cannot be complied with and the registration should be refused, and for the cancellation of any such registration by that Minister if in his opinion the regulations are not being complied with and the registration should be cancelled.
- (3) Any regulations made by virtue of paragraph (b) of the last foregoing subsection shall—
 - (a) require notice to be given to the person affected of any intention to refuse or cancel the registration, stating the grounds on which it is alleged that the regulations cannot be or are not being complied with, as the case may be, and his rights of making objections and representations in accordance with the regulations ;
 - (b) enable the said person, within the time prescribed by the regulations (which shall not be less, in the case of a refusal, than twenty-eight days or, in the case of a cancellation, than twenty-one days, from the date of the service of the said notice), to object, in respect of all or any of the grounds stated in the said notice, that the regulations can be or are being complied with, as the case may be ;
 - (c) provide for the reference of any such objection to a tribunal constituted in accordance with the regulations ;
 - (d) provide for the procedure of the said tribunal, and in particular for entitling the person objecting to appear before the tribunal with any witnesses he desires to call, and to require the tribunal to inspect the premises to which the objections relate ;
 - (e) require the said tribunal to determine whether the objections are made out and, if not, on which of the grounds in respect of which they are made they are not made out, and provide that, in the event of a difference of opinion among the members of the tribunal, the determination of the majority of them shall be the determination of the tribunal ;
 - (f) require that the determinations of the tribunal shall be reported to the Minister of Agriculture and Fisheries and communicated by him to the person objecting, and

provide that the determinations of the tribunal as stated in the report shall, for the purpose of the proposal to refuse or cancel registration, be conclusive evidence of the fact found thereby ;

- (g) enable the said person within the time so prescribed to make representations to the Minister of Agriculture and Fisheries that the registration should not be refused or cancelled on the grounds stated in the notice mentioned in paragraph (a) of this subsection ;
 - (h) provide that no registration shall be cancelled—
 - (i) in any case, until the expiration of the prescribed time for making objections or representations under the regulations ;
 - (ii) in a case where an objection is made within the time, until the report of the tribunal thereon has been received and considered by the said Minister ;
 - (iii) in a case where representations are made to the said Minister within that time, until the representations have been considered by him.
- (4) Any premises being immediately before the commencement of this Act a dairy farm, and any person then carrying on the trade of a dairy farmer, shall be deemed to have been registered in accordance with Milk and Dairies Regulations by the Minister of Agriculture and Fisheries at the commencement of this Act ; and those regulations shall include provision for ascertaining the premises and persons deemed to have been registered as aforesaid and for making consequential adjustments of the register kept by any authority under the said regulations immediately before the commencement of this Act, and may include provision for any matter incidental to or consequential on the foregoing provisions of this subsection.
- (5) The power of making regulations under paragraph (b) of subsection (1) of the said section twenty of the principal Act for the inspection of dairies and persons in or about dairies shall include power to make regulations for the inspection of cattle on dairy farms.
- (6) The power of making regulations under paragraph (h) of the said subsection (1) regulating the conveyance and distribution of milk shall include power to make regulations regulating the storage of milk.

The expression " dairy farm " means any farm, cowshed or other premises being a dairy within the meaning of the Act of 1938 (see *infra*) on which milk is produced from cows, but does not include any part of any such farm or premises on which milk is manufactured into other products unless the milk produced on the farm or premises forms a substantial part of the milk so manufactured. " Dairy farmer " means a dairyman (see *infra*) who produces milk from cows(*q*).

When the Food and Drugs (Milk and Dairies) Act, 1944, comes into operation (see *ante*, p. 361), Milk and Dairies Regulations must provide for the constitution of a central

(*q*) Sect. 8(1), Food and Drugs (Milk and Dairies) Act, 1944 ; 37 Halsbury's Statutes 304.

committee and of county committees for the several administrative counties, to keep under review the operation and administration of Milk and Dairies Regulations and Milk (Special Designation) Regulations, and to make recommendations with respect thereto, in the case of the central committee, to the Minister of Agriculture and Fisheries and, in the case of a county committee, to the central committee(r).

REGISTRATION OF COWKEEPERS AND DAIRYMEN.

Every local authority (see *ante*, p. 18) must keep registers of all persons carrying on in their district the trade of cowkeeper(s) or dairyman(t), and of all farms and other premises within their district which are used as dairies(u). Where a farmer kept cows for amusement and occasionally sold milk to his neighbours he was held not to be carrying on the trade of cowkeeper so as to require to be registered with the local authority(v). In a further case(w), a dairyman registered in St. Pancras who made one sale of milk in Marylebone from a barrow in the street, was not required to register in Marylebone. On the other hand, a dairyman must register with each local authority in whose area he retails milk, in addition to the local authority in whose area his dairy is situated(x).

It must be noted that registration involves both the *person* and the *premises*, and the local authority are required to keep separate registers of persons and premises. In accordance with the definition of "dairy"(y) it will be seen that where premises are used for the sale of milk in sealed bottles only, such is not a dairy. At the same time, however, the person selling milk in sealed bottles is a dairyman and he must be registered as such with the local authority(z).

(r) *Ibid*, sect. 4(3) ; 37 Halsbury's Statutes 302.

(s) "*Cowkeeper*" means any person who keeps one or more cows for the purpose of the supply of milk—art. 2(1), Milk and Dairies Order, 1926 ; S.R. and O., 1926, No. 821.

(t) "*Dairyman*" includes an occupier of a dairy, a cowkeeper, and a purveyor of milk—sect. 100(1), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 316.

(u) Art. 6(1), Milk and Dairies Order, 1926 ; S.R. and O., 1926, No. 821.

(v) *Southwell v. Lewis* (1880), 45 J.P. 206 ; 25 Digest 126, 474.

(w) *Emerton v. Hall* (1910), 74 J.P. 301 ; 25 Digest 126, 476.

(x) *Easington R.D.C. v. Gilson* (1929), 46 T.L.R. 107 ; Digest Supp.

(y) "*Dairy*" includes any farm, cowshed, milk store, milk shop or other place from which milk is supplied on or for sale, or in which milk is kept or used for purposes of sale or manufacture into butter, cheese, dried milk or condensed milk for sale, and, in the case of a purveyor of milk who does not occupy any premises for the sale of milk, includes the place where he keeps the vessels used by him for the sale of milk, but does not include a shop from which milk is not supplied otherwise than in properly closed and unopened receptacles in which it was delivered to the shop or a shop or other place in which milk is sold for consumption on the premises only—Art. 2(1), Milk and Dairies Order, 1926 ; S.R. and O., 1926, No. 821.

(z) *Burrows v. Rapson* (1927), 25 L.G.R. 397 ; Digest Supp.

It must be emphasised that every person who carries on the trade of cowkeeper or dairyman must be registered with the local authority. Consequently, a dairyman who sells milk in the area of a local authority in which he has no premises (*i.e.* retail purveyor of milk) is required to be registered with that authority—he will, of course, be registered also with the local authority in whose area his dairy is situated. Similarly, if a dairyman sells all his milk outside the area in which his dairy is situated, he must be registered with the authority in that area as well as with all the authorities in whose districts he retails his milk. It frequently happens, therefore, that one dairyman may be registered with a number of local authorities in addition to the authority in whose area his dairy premises are situated.

In order that the local authority may be supplied with all the relevant information by a person who desires to be registered as a cowkeeper or dairyman, an application form should be completed and the following is suitable for the purpose :—

OXFORD CITY COUNCIL.

Milk and Dairies Order, 1926.

Food and Drugs Act, 1938.

APPLICATION TO BE REGISTERED.

Name of Applicant.....

Address of Applicant.....

.....

Trade carried } COWKEEPER.
on in } DAIRYMAN.
City of Oxford. } PURVEYOR OF MILK.

(1) Particulars to be filled in by Cowkeepers :

1. Situation of cowsheds.....
2. Number of cowsheds
3. Number of cows to be kept in each cowshed
4. Situation of dairy
5. (1) State whether the Applicant has a milk cooler
- (2) If so, state its position
- (3) State whether all the milk produced on the farm is cooled. If not, state what proportion is cooled

- 6. (1) Is the milk produced on the farm sold by wholesale to a retail dairyman ? ..
- (2) If so, what proportion is sold to the retailer ?
- 7. (1) Is the milk sold by the Applicant direct to the consumer ?
- (2) If so, state whether the milk is delivered to the consumer's premises, or only sold from the premises of the Applicant .. }
- (3) If delivered to the premises of the consumer, state the number of deliveries of milk per day }
- (4) If delivered to the premises of the consumer, state the districts in which such delivery is made }

(2) Particulars to be filled in by Dairymen :

- 1. Situation of dairy ..
- 2. Is milk sold loose or in bottles ..
- 3. State source of milk supply ..
- 4. If milk is delivered to the premises of the consumer, by the Applicant, in addition to milk being sold at a shop, state :—
 - (1) Number of deliveries of milk per day ..
 - (2) Districts in which milk is delivered ..

(3) Particulars to be filled in by Purveyors of Milk :

- 1. (a) State whether Applicant is also a cowkeeper ..
- (b) If so, state situation of farm ..
- 2. If Applicant is not a cowkeeper, state source of milk supply ..
- 3. State districts in which milk is purveyed ..
- 4. State situation of premises where milk vessels are kept ..
- 5. State number of times milk is delivered each day ..

Signature of Applicant.....
Dated this.....day of.....194.....

This form to be returned to the
CHIEF SANITARY INSPECTOR, OXFORD.

Power to refuse or cancel registration.—Subject to the provisions of section 22 of the Act of 1938, *infra*, a local authority MUST register any person proposing to carry on the trade of cowkeeper or dairyman or to use any farm or other premises as a dairy who applies to them(a). In short, a local authority have no power to refuse to register a person as a cowkeeper or dairyman, or premises for use as a dairy, *whatever the type of person or the condition of the premises*, except in the case of *retailers* who may be dealt with in accordance with section 22, *infra*. Subject to these provisions no person may carry on the trade of cowkeeper or dairyman or use premises as a dairy unless he and the premises are registered with the local authority(b), and before commencing to use as a cowshed or as a place for the keeping of milk, a building not previously used for that purpose, the occupier must give one month's notice in writing to the local authority of his intention to do so(c).

Section 22, Food and Drugs Act, 1938.—Power to refuse or cancel registration of dairymen (see post, p. 373).

- (1) If it appears to an authority by whom dairymen are registered in pursuance of Milk and Dairies Regulations that the public health is, or is likely to be, endangered by any act or default of a person who has applied to be, or is, registered as a retail purveyor of milk, being an act or default, committed whether within or without the district of the authority, in relation to the quality, storage or distribution of milk, they shall serve on him a notice stating the place and time, not being less than seven days after the date of the service of the notice, at which they propose to take the matter into consideration, and informing him that he may attend before them, with any witnesses whom he desires to call, at the place and time mentioned to show cause why they should not, for reasons specified in the notice, refuse to register him as a retail purveyor of milk, or, as the case may be, cancel his registration as such, either generally or in respect of any specified premises.
- (2) If a person on whom a notice is served under the preceding subsection fails to show cause to the satisfaction of the authority, they may refuse to register him as a retail purveyor or, as the case may be, cancel his registration as such, and shall forthwith give notice to him of their decision in the matter, and shall, if so required by him within fourteen days of their decision, give to him within forty-eight hours a statement of the grounds on which it was based.
- (3) A person aggrieved by the decision of an authority under this section to refuse to register him, or to cancel his registration, may appeal to a court of summary jurisdiction.
- (4) The court before which a person registered as a retail purveyor of milk is convicted of an offence under any of the provisions

(a) Art. 6(2), Milk and Dairies Order, 1926 ; S.R. and O., 1926, No. 821.

(b) *Ibid*, Art. 6(3).

(c) *Ibid*, Art. 7.

of this Act relating to milk, or under any Milk and Dairies Regulations may, in addition to any other penalty, cancel his registration as such.

- (5) An authority may require a person who applies to them for registration as a retail purveyor of milk to give to them, before his application is considered, information as to whether he is, or has been, registered as such a purveyor, either in their district or in the district of any other authority, and, if an applicant who is so required gives to the authority any information which is false in any material respect, he shall be guilty of an offence.
- (6) Where under this section a person's application for registration as a retail purveyor of milk is refused, or his registration is cancelled, he shall not be liable for any breach of a contract for the purchase of further supplies of milk from another person, if such refusal or cancellation was due to the quality of milk supplied by that person.
- (7) In London the provisions of this section shall apply also in relation to dairymen who are not retail purveyors of milk as they apply in relation to dairymen who are such purveyors.

There are no precise conditions laid down either in the Act of 1938 or the Milk and Dairies Regulations, 1926 to 1943, regarding the type of person or premises to be registered for the sale of milk. Some local authorities have adopted their own conditions, the following being typical of many :—

OXFORD CITY COUNCIL.

MILK AND DAIRIES ORDER, 1926.

Conditions Governing the Registration of Milk Shops and of Dairies, etc.

Section 22 of the Food and Drugs Act, 1938, empowers the City Council to refuse to register, or remove from the register, any retail purveyor of milk or dairyman, if they consider danger to health is likely to arise as the result of the sale of milk by such retailer or dairyman.

With a view to securing uniformity, the City Council have adopted the following conditions, which apply in the case of all existing and future Milk Shops and Dairies registered under the Milk and Dairies Order, 1926.

(a) Existing Businesses.

It is recognised that the position of existing businesses which have been previously registered is different from new businesses, and provided the applicant is satisfactory and there are reasonable grounds for the assumption that milk can be stored and sold without serious contamination in the premises which are at present and have been continuously registered in the past for the sale of milk, the registration will be continued.

Provided that where any substance likely to adversely affect the milk, either by dissemination of dust or by effluvium, is stored

in the shop, a suitable cabinet must be provided for the storage of the milk receptacle in the shop.

For these cases paragraphs 5 and 6 of the conditions applicable to new businesses apply in the case of existing businesses of a mixed character, where goods mentioned in paragraph 6 are stored.

The position of existing businesses will be reviewed from time to time with due regard to the best interests of public health.

The fact that a business has been previously registered will not be a qualification for the registration of the same premises or business when acquired by a new applicant.

(b) *New Businesses.*

Applications for the registration of new businesses will receive special consideration, and every effort made to approve only such persons who desire to conduct a purely dairy business in suitable premises.

The conditions applicable to new businesses are as follows, *viz.* :—

- (1) The applicant must be a suitable person.
- (2) The premises must be in a satisfactory structural condition.
- (3) The premises must not be in close proximity to any water-closet, earth-closet, privy, cesspool, urinal, refuse receptacle, manure heap, etc.
- (4) The premises must be well lighted and ventilated and provided with satisfactory facilities for the storage of milk, and the cleansing and sterilising of milk vessels.
- (5) Where loose milk is sold in a shop from a bowl or other receptacle, and goods of a non-dairy character are also sold or stored, a suitable wooden cabinet must be provided for the reception of the bowl or milk receptacle. The cabinet must have a glass front exposed to the view of the customer; to be properly ventilated at the top and bottom by means of openings completely covered with suitable wire gauze; and to be provided with a tightly fitting door.

No other substance to be kept in the milk cabinet.

- (6) No premises to be registered where any of the following substances are stored in the shop, *viz.* :—

Drapery.

Haberdashery.

Hosiery.

Newspapers.

Firewood or firelighters.

Rubbing and cleansing stones.

Fish, except tinned varieties.

Game.

Tripe.

Vegetables and fruit; except tinned or bottled varieties.

Tobacco.

Paraffin and other oils.

Any other article which, in distribution or storage, will disseminate dust or by effluvium be liable to affect the milk undesirably.

Note.—These conditions do not apply to shops where milk is sold only in sealed bottles delivered in an unopened state to the premises.

It must be emphasised that the power to refuse or cancel registration is *restricted absolutely to retail purveyors of milk*. It should also be noted that such action can only be taken if it appears to the authority that "*the public health is, or is likely to be, endangered by any act or default of a person.*" This very much restricts the power of the local authority. The wording in section 1 of the Act of 1944 (see *ante*, p. 364) is very different. It will enable the Minister of Agriculture and Fisheries to refuse or cancel registration, if in his opinion "*having regard to conditions existing at the premises to be registered the regulations(d) cannot be complied with.*" Whatever the condition of the premises a local authority, acting under section 22, *supra*, can only refuse or cancel registration if the public health is or is likely to be endangered. There may be many unsatisfactory conditions existing on farm or dairy premises, involving contraventions of the Milk and Dairies Order, 1926(e), which cannot be proved (in a court of summary jurisdiction, if necessary) to be causing or likely to cause danger to the public health. Consequently the power to refuse or cancel the registration of retail purveyors of milk, contained in section 22, *supra*, are much less extensive than might appear at first sight.

Where a sanitary inspector is of opinion that an application for registration should be refused or a registration cancelled, he should submit a full report in writing to the local authority, setting out in detail the reasons for recommending such action. As the authority must act in a quasi-judicial character when deciding the matter, it is desirable that the procedure should follow closely that suggested with regard to designated milk licences (see *post*, p. 435). The sanitary inspector, being in the nature of the prosecutor, should state the case for refusing or cancelling registration, after which the applicant or registered person should be given full opportunity to answer the points made by that officer. Nothing should be said to the local authority by either party in the absence of the other. As to the appointment of committees and sub-committees and the delegation of the powers of the local authority thereto, see *ante*, p. 29. As to the giving of notices, see section 283, Public Health Act, 1936 (f), incorporated in the Act of 1938 by section 96(g).

Where a person is aggrieved (and the successor to the business of a dairyman may be(h)) by the decision of a local authority he has a right of appeal to a court of summary juris-

(d) Milk and Dairies Regulations.

(e) S.R. and O., 1926, No. 821.

(f) 29 Halsbury's Statutes 505.

(g) 31 Halsbury's Statutes 311; and see *ante*, p. 6.

(h) *Prosser v. Mountain Ash U.D.C.*, [1931] 2 K.B. 132; Digest Supp.

diction. In such circumstances it is important that there should be a full record of the proceedings before the local authority for consideration by the court. The time within which an appeal may be brought is 21 days from the date on which the local authority's decision is served⁽ⁱ⁾ and the right of appeal must be stated on the notice informing the person of the authority's decision^(k). An appeal from the judgment of a court of summary jurisdiction lies to quarter sessions^(l). Pending the determination of an appeal, the person concerned may carry on the business of a retail purveyor of milk^(m).

Where a person who is registered as a cowkeeper or dairyman dies, the registration enures for the benefit of his widow or any other member of his family until the expiration of two months from his death, or until the expiration of such longer period as the local authority may allow⁽ⁿ⁾.

Provisions of the Act of 1944.—When the Act of 1944 comes into operation (see *ante*, p. 361) section 22 of the Act of 1938 (see *ante*, p. 369) will be amended so as to have effect as set out in the Schedule to the Act of 1944^(o), *infra*.

Section 22 of the Act of 1938, as amended by the Food and Drugs (Milk and Dairies) Act, 1944.

- (1) If it appears to an authority by whom dairymen are registered in pursuance of Milk and Dairies Regulations, other than the Minister of Agriculture and Fisheries, that the public health is, or is likely to be, endangered by any act or default of a person who has applied to be, or is, so registered by the authority, being an act or default, committed whether within or without the district of the authority, in relation to the quality, storage or distribution of milk, they shall serve on him a notice—
- (a) stating the place and time, not being less than seven days after the date of the service of the notice, at which they propose to take the matter into consideration ; and
 - (b) informing him that he may attend before them, with any witnesses whom he desires to call, at the place and time mentioned to show cause why they should not, for reasons specified in the notice, refuse to register him or cancel his registration, as the case may be, either generally or in respect of any specified premises.

(i) Sect. 87(2), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 307.

(k) *Ibid*, sect. 87(3) ; 31 Halsbury's Statutes 308.

(l) *Ibid*, sect. 88 ; 31 Halsbury's Statutes 308.

(m) *Ibid*, sect. 90 ; 31 Halsbury's Statutes 308.

(n) *Ibid*, sect. 97 ; 31 Halsbury's Statutes 312.

(o) Sect. 3, Food and Drugs (Milk and Dairies) Act, 1944 ; 37 Halsbury's Statutes 302.

- (2) If a person on whom a notice is served under the preceding subsection fails to show cause to the satisfaction of the authority, they may refuse to register him or cancel his registration, as the case may be, and shall forthwith give notice to him of their decision in the matter and shall, if so required by him within fourteen days of their decision, give to him within forty-eight hours a statement of the grounds on which it was based.
- (3) A person aggrieved by the decision of an authority under this section to refuse to register him, or to cancel his registration, may appeal to a court of summary jurisdiction.
- (4) The court before which a person registered as a dairyman otherwise than by the Minister of Agriculture and Fisheries is convicted of an offence under any of the provisions of this Act relating to milk, or under any Milk and Dairies Regulations may, in addition to any other penalty, cancel his registration as such.
- (5) An authority other than the Minister of Agriculture and Fisheries may require a person who applies to them for registration as a dairyman to give to them, before his application is considered, information as to whether he is, or has been, registered as a dairyman, whether by them or the Minister of Agriculture and Fisheries or some other authority, and if an applicant who is so required gives to the authority any information which is false in any material respect, he shall be guilty of an offence.
- (6) Where under this section a person's application for registration is refused, or his registration is cancelled, he shall not be liable for any breach of a contract for the purchase of further supplies of milk from another person, if such refusal or cancellation was due to the quality of the milk supplied by that person.

In spite of the fact that in dealing with the registration of persons carrying on the trade of a dairy farmer, the Minister of Agriculture and Fisheries will have the right to refuse or cancel registration if he is of opinion that any Milk and Dairies Regulations cannot or are not being complied with (see *ante*, p. 364), the amended section 22, *supra*, which sets out the powers of local authorities with regard to this matter, still restricts the power of refusal or cancellation to cases where the public health is, or is likely to be, endangered. It should also be observed that whereas there is no appeal to a court of summary jurisdiction against a decision of the Minister of Agriculture and Fisheries with respect to dairy farmers, such an appeal may be made by a dairyman against the decision of a local authority, and from the decision of the court of summary jurisdiction to quarter sessions. It will thus be seen that the Minister is in a much more favourable position in the administration of the law as it affects dairy farmers than is the case with local authorities, and conversely, dairy farmers are in a much worse position than dairymen.

Registers of dairymen and dairies.—Local authorities may keep the registers of dairymen and dairies in whatever form they wish. Such registers may be compiled in books, on cards, or on loose sheets. The use of cards or loose sheets is much to be desired, enabling the registers to be kept up to date. In normal times there are many changes in the ownership of dairy businesses, and the card or loose-leaf system enables new cards or sheets to be inserted whenever a change of ownership takes place. Whatever system is adopted, the following information should be recorded in the registers :—

Situation of premises.

Name of cowkeeper or dairyman.

Name and address of owner of premises.

In respect of each cowshed—

- i—type of building ;
- ii—lighting ;
- iii—ventilation ;
- iv—water supply ;
- v—floor ;
- vi—walls and ceiling ;
- vii—drainage ;
- viii—washing facilities for milkers ;
- ix—floor space ;
- x—height ;
- xi—maximum number of cows.

In respect of each dairy—

- i—type of building ;
- ii—lighting ;
- iii—ventilation ;
- iv—water supply ;
- v—floor ;
- vi—drainage ;
- vii—facilities for cleansing and sterilising vessels ;
- viii—cooler and situation ;
- ix—other plant.

It may be convenient to arrange for particulars of inspections to be recorded on the back of the card or loose sheet.

The following combined register-card may be used for the register of cowkeepers, dairymen and purveyors of milk, together with the premises used by them for the purposes of their business.

OXFORD CITY COUNCIL.
PUBLIC HEALTH DEPARTMENT.

Milk and Dairies Order, 1926.

Food and Drugs Act, 1938.

REGISTER OF COWKEEPERS, DAIRYMEN AND PURVEYORS
OF MILK.

Name.....	COWKEEPER.
	DAIRYMAN.
Address.....	PURVEYOR OF MILK.

DAIRYMAN :

DAIRY.

Situation.....

Type of building.....

Lighting.....

Ventilation.....

Water supply.....

Construction of floor and drainage.....

Facilities for cleaning and sterilising vessels.....

Cooler.....

Other plant.....

KIND OF MILK—Loose, Bottled.....

Where bottles are filled.....

Source of milk supply.....

.....

.....

If milk is delivered to premises of consumer in addition to milk being sold at shop :—

- (1) Number of deliveries per day.....
- (2) Districts in which milk is delivered.....

PURVEYOR OF MILK :

If Purveyor also a cowkeeper, situation of farm.....

If Purveyor not a cowkeeper, source of milk supply.....

.....

.....

.....

Districts in which milk is purveyed.....

Premises where milk vessels are kept.....

Number of deliveries per day.....

COWKEEPER :

COWSHEDS.

Details.	Shed No. 1.	Shed No. 2.	Shed No. 3.	Shed No. 4.
Type of building ..				
Lighting				
Ventilation				
Water supply				
Floor				
Walls				
Drainage				
Floor space and height				
Maximum number of cows to be kept ..				
Facilities for washing milkers' hands ..				

DAIRY.

Type of building and situation.....	
Lighting.....	
Ventilation.....	
Construction of floor and drainage.....	
Water supply.....	
Facilities for cleaning and sterilising vessels	
Cooler and position.....	
Proportion of milk cooled.....	

DISPOSAL OF MILK.

Sold by Wholesale to Retail Dairyman.

Sold by Cowkeeper direct to Consumer By delivery to
 Consumers' Premises At the Farm.....

No. of deliveries per day—ONE, TWO.

Districts where delivered

REMARKS :

Certificate of Registration.—Although it is not obligatory, it is desirable that the local authority should issue a certificate of registration in respect of each person registered as a cow-keeper or dairyman, and in respect of the premises used by such persons for the purpose of their business. The following is suitable for the purpose :—

No.....

OXFORD CITY COUNCIL.

Food and Drugs Act, 1938. Milk and Dairies Order, 1926.

Certificate of Registration.

I HEREBY CERTIFY that.....
of
carrying on the trade(s) of.....
within the City of Oxford, is REGISTERED as a.....
.....
under the Milk and Dairies Order, 1926, and that the Premises detailed in the Schedule attached hereto are also REGISTERED for use in connection with such trade(s).

Dated this.....day of.....19.....
.....

Chief Sanitary Inspector.

SCHEDULE.

Situation and Description of Premises.	Purpose for which the Premises are used.

Milk and Dairies Order, 1926.

ARTICLE 7.—Before commencing to use as a cowshed or as a place for the keeping of milk a building not previously used for that purpose, the occupier shall give one month's notice in writing to the sanitary authority of his intention so to do.

Particulars of registration to be supplied to county council.—

When the Milk and Dairies Order, 1926(*p*), first came into operation local authorities were required to inform the county council of the particulars of registration then in force of cowkeepers and their premises, and thereafter to inform the county council of all alterations made in the register of cowkeepers(*q*). This was needed at the time the Order came into force, because the county council was the responsible authority for the administration of Part IV, relating to the veterinary inspection of cattle, and without knowledge of the farms on which cows were kept it would have been impossible for the county council to carry out their duties. Part IV of the Order of 1926 was revoked, however, in 1938(*r*), when the Agriculture Act, 1937(*s*), transferred the functions of county councils with respect to the veterinary inspection of cattle to the Minister of Agriculture and Fisheries, but the duty of local authorities to forward particulars contained in the register of cowkeepers still remains.

PROVISIONS WITH RESPECT TO COWKEEPERS.

For the purposes of the Milk and Dairies Order, 1926, the expression "cowkeeper" means any person who keeps one or more cows for the purpose of the supply of milk, and the expression "dairy" includes, *inter alia*, any farm or cowshed(*t*). The expression "dairyman" also includes a cowkeeper(*u*). It is clear, therefore, that the provisions of the Order of 1926 relating to dairies and dairymen apply, where appropriate, to cowkeepers.

The Ministry of Works have issued a comprehensive Report(*v*) on *Farm Buildings*, Chapter 9 of which deals with the construction of cowsheds and dairies, to which reference should be made.

Lighting and ventilation of cowsheds.—Every cowshed must be provided with a sufficient number of windows or other openings suitably placed and communicating directly with the external air. Such window openings must be such as to secure that the building is sufficiently lighted during the hours of daylight and the openings for ventilation must be kept in

(*p*) S.R. and O., 1926, No. 821.

(*q*) *Ibid*, Art. 6(4).

(*r*) Milk and Dairies Amendment Order, 1938 ; S.R. and O., 1938, No. 217.

(*s*) Part IV ; 30 Halsbury's Statutes 60.

(*t*) Art. 2(1), Milk and Dairies Order, 1926 ; S.R. and O., 1926, No. 821.

(*u*) Sect. 100(1), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 313.

(*v*) Post-War Building Studies No. 17 ; 1945 ; H.M.S.O., price 3s. net.

proper order and so used as to secure that the air in the cowshed is kept in a fresh and wholesome condition(w). In the case of a building which was used as a cowshed on the 1st October, 1926, action for the enforcement of the above requirements regarding lighting and ventilation cannot be taken until eighteen months after the service of a notice by the local authority drawing the attention of the *occupier* thereto(x). It should be noted, however, that the obligation to serve a notice only applies in the case of buildings *used as cowsheds on 1st October, 1926*. In the case of premises used as such *for the first time* since that date, there is no necessity to serve a notice, although it is not advisable to take proceedings with respect to a contravention of article 12(1), *supra*, until the attention of the occupier of the cowshed has been drawn to the matter and he has had a reasonable time to carry out the necessary work.

Artificial lighting of cowsheds.—Every cowshed used during the hours of darkness must be provided with such lamps or other means of artificial lighting as will enable the milking of cows to be conducted in a good and proper light(y).

Water supply for cowsheds.—Every cowshed must be provided with a suitable and sufficient supply of water. Every receptacle used for the storage or conveyance of water must be emptied and cleansed from time to time to prevent the pollution of water and to maintain it in a suitable condition. The water supply used for the watering of cows must, as far as reasonably possible, be protected against contamination caused by the drainage of foul water(z). It should be noted that the only contamination that can be dealt with is that "caused by the drainage of foul water." In the case of a building which was used as a cowshed on the 1st October, 1926, action for the enforcement of the above requirements regarding water supply cannot be taken until eighteen months after the service of a notice by the local authority drawing the attention of the *occupier* thereto(a). It should be noted, however, that the obligation to serve a notice only applies in the case of buildings *used as cowsheds on 1st October, 1926*. In the case of premises used as such *for the first time* since that date, there is no necessity to serve a notice, although it is not advisable to take proceedings with respect to a contravention of Article 13, *supra*, until the attention of the occupier of the cowshed has been drawn to the matter and he has had a reasonable time to carry out the necessary work.

(w) Art. 12(1), Milk and Dairies Order, 1926; S.R. and O., 1926, No. 821.

(x) *Ibid*, Art. 1.

(z) *Ibid*, Art. 13.

(y) *Ibid*, Art. 12(2).

(a) *Ibid*, Art. 1.

Floors of cowsheds.—The floor of every cowshed must be constructed of such material and in such manner as to render it practicable to remove all liquid matter, and for that purpose it must be provided with channels of rendered concrete or other durable and impervious material so constructed as to prevent as far as practicable the soiling of the cows. The floor must be such that all liquid matter will be conveyed to a suitable drain or other place of disposal outside the cowshed(b). In the case of a building which was used as a cowshed on the 1st October, 1926, action for the enforcement of the above requirements regarding the floor of cowsheds cannot be taken until eighteen months after the service of a notice by the local authority drawing the attention of the occupier thereto(c). It should be noted, however, that the obligation to serve a notice only applies in the case of buildings *used as cowsheds on 1st October, 1926*. In the case of premises used as such *for the first time* since that date there is no necessity to serve a notice, although it is not advisable to take proceedings with respect to a contravention of Article 25, *supra*, until the attention of the occupier of the cowshed has been drawn to the matter and he has had a reasonable time to carry out the work.

Cleanliness of cowsheds.—Every part of the interior of every cowshed must be thoroughly cleansed from time to time, as often as may be necessary to secure that the cowshed is at all times reasonably clean and sweet. The ceiling or interior of the roof and the walls of every cowshed must be limewashed or sprayed with lime or otherwise disinfected twice at least in every year, once during April or May and once during September or October, and at such other times as may be necessary, provided that where any part of the ceiling or walls of a cowshed is properly painted or varnished or constructed or covered with tiles or other smooth washable material, it must be washed from time to time as often as may be necessary to keep it clean. All dung and other offensive matter must be removed from the cowshed at least once a day, and such matter must not be placed so as to render uncleanly the access to any cowshed or milk room(d).

Prevention of contamination of milk.—The provisions relating to the prevention of contamination of milk by cow-keepers are similar to those for dairymen (see *post*, p. 387).

Milking of cows.—Every person engaged in the milking of cows must keep his clothing and person in a cleanly condition(e). Although there is no power to compel the provision of washable overalls and head-covering, it is most desirable

(b) *Ibid.*, Art. 25.(d) *Ibid.*, Art. 22.(c) *Ibid.*, Art. 1.(e) *Ibid.*, Art. 15.

that milkers should be supplied with them. The following precautions must be taken in connection with the milking of cows, *viz.* :—

- i—the milking must be carried out in a good and proper light whether in the daytime or in the hours of darkness ;
- ii—before milking is begun, all dirt in or around the flanks, udders and teats of each cow must be removed, and the udder and teats must be cleaned by being thoroughly rubbed with a clean, damp cloth ;
- iii—the hands of the milker must be thoroughly washed and dried before milking and must throughout the milking be kept clean, free from contamination and, as far as practicable, dry ;
- iv—all milking-stools must be kept thoroughly clean ;
- v—as soon as possible after milking, the milk of each cow must be removed from the cowshed to a suitable milk room or placed in a covered receptacle ; and
- vi—no dry bedding or other dusty matter must be moved in the cowshed during the milking or within half an hour before the milking commences, except so far as may be necessary for the removal of dung(*f*).

Cooling, bottling or processing milk.—The cooling, bottling, sterilising or pasteurising of milk, or any other process connected with milk, must not be carried out in a cowshed, nor may any appliances connected with any such process be kept in such a shed, or in any place where the milk or appliances would be liable to contamination arising from any cowshed(*g*).

Cooling of milk.—It is the duty of every cowkeeper, without any delay except such as may be caused by any process of straining or centrifugalisation to cause the milk to be cooled to a temperature not more than 5° Fahr. higher than the temperature of the water supply available for cooling. This does not apply, however, in the following cases, *viz.* :—

- i—where the milk is delivered by road without delay to a collecting station provided with adequate facilities for cooling milk to a temperature not exceeding 55° Fahr. ; or
- ii—where the milk is used for the manufacture of butter, cream, cheese or other milk products at the premises where it is produced or is supplied to some other person for this purpose ; or
- iii—where the cowkeeper sells the milk to the consumer and either delivers it at the premises where it is produced or dispatches it at least twice a day on the day of production ; or
- iv—where the cowkeeper sells the milk to some other purveyor at the premises where it is produced for delivery to the consumer immediately after milking.

Where a person receives at a collecting station milk which has not previously been cooled, he must forthwith cool it to a temperature not exceeding 55° Fahr., unless he uses it in the preparation of butter, cream, cheese or other milk product

(*f*) S.R. and O., 1926, No 821, Art. 23.

(*g*) *Ibid*, Art. 16.

Every person who purchases milk for re-sale, which has not previously been cooled, must cool it to the same temperature unless he uses it for the manufacture of milk products or delivers it to the consumer immediately after milking^(h). It should be emphasised that the cooling of milk immediately after milking is not obligatory in all cases, as is often thought to be the case. The exceptions, listed above, result in a considerable quantity of milk being used without being cooled. It should also be noted that the cooling temperature is determined by the temperature of the water supply available on the farm. In many cases this means a comparatively high temperature in the summer months, when the temperature of the water supply is high.

Cleansing and sterilising of milk utensils.—All vessels, including the lids and appliances used or intended to be used by a cowkeeper for containing, measuring or stirring milk, or for any other purpose for which they may be brought into contact with milk, must be kept at all times in a state of thorough cleanliness. For this purpose—

- (i) every such vessel, lid and appliance (except a mechanical milker or similar appliance used in milking which is efficiently cleansed before it is brought into contact with milk) shall be thoroughly washed as soon as may be after use, and shall be cleansed and scalded with boiling water or steam before it is used again ;
- (ii) no oxidising or preservative agent other than such solutions of sodium hypochlorite as may from time to time be approved by the Minister of Agriculture and Fisheries shall be used in the cleansing of any such vessel, lid or appliance, and where such solutions so approved as aforesaid are used, all trace thereof shall be removed before such vessel, lid or appliance is brought into contact with milk ;
- (iii) every such vessel, lid and appliance when not in use shall be stored in a clean place and shall be protected from dust and dirt ; and
- (iv) no such vessel or appliance shall be used for containing, measuring or applying any process or treatment to any article other than milk or milk products⁽ⁱ⁾.

Previous to the issue of the Provisional Regulations of 21st May, 1943, it was illegal to use any oxidising or preservative agent whatsoever in the cleansing of any milk vessel or appliance, but in view of the difficulty in securing any considerable extension in the use of steam for sterilising dairy equipment the original provisions of the Order of 1926 were modified so as to permit the use of standard solutions of sodium hypochlorite for this purpose. It should be noted that the Provisional Regulations do not abrogate the provisions relating to the cleansing and scalding of milk utensils, etc., with boiling

(h) *Ibid*, art. 24.

(i) *Ibid*, art. 21, as amended by P.R. and O., 1943, 21st May, 1943.

water or sterilising with steam. The Regulations permit the use of the following products, being solutions of sodium hypochlorite approved by the Ministry of Agriculture :—

<i>Name of Product.</i>	<i>Name and Address of Manufacturer.</i>
" Deosan "	.. Deosan Ltd., 345 Gray's Inn Road, London, W.C.1.
" Chloros "	.. I.C.I. (General Chemicals) Ltd., Cunard Buildings, Liverpool.
" Dairozan "	.. B. Laporte Ltd., Luton, Beds.
" Hyposan "	.. Voxsan Ltd., 23 Church Street North, West Ham, London, E.15.

The Ministry of Agriculture require that at the time of dispatch from the manufacturer's premises the product must have a total available chlorine content of between 9 per cent. and 12 per cent. w/w plus or minus 0.5 per cent., and also that certain directions, including the date of dispatch, manner of storing and the last date for use, must be inserted on the label. Approved *solutions* must contain not less than 0.7 per cent. of sodium chlorate to act as a " detector " should sodium hypochlorite solutions obtain access to the milk either through the vessels not being properly washed or otherwise. The Ministry have arranged to take samples of approved hypochlorite solutions and it will not normally be necessary for local authorities to do so, except in specific cases where they consider it desirable to check the strength of the solutions(k). The importance of the use of steam, even where hypochlorite solutions are used as now permitted by the Provisional Regulations, has been emphasised by Mattick, Hoy and Neave(l), who state that : " *Our experience is that in general practice, consistently good ' bacteriological cleanliness ' will be obtained with chlorine solutions for short periods only and, therefore, steam or boiling water must be used at least once a week.*" The technical problems involved in connection with the cleansing and sterilisation of milk bottles have been considered by Mattick and Hoy(m).

Milk churns.—Milk churns or other vessels must not be used for the reception, measurement, storage or delivery of milk if the interior surface is incapable of being readily

(k) Circular 2819, Ministry of Health, May 1943.

(l) Mattick, A. T. R., Hoy, W. A. and Neave, F. K., " *The Sterilisation of Milk Vessels by Chlorine in Emergencies*," National Institute for Research in Dairying Publication, No. 691.

(m) Mattick, A. T. R. and Hoy, W. A., " *Bottle Washing and Bottle-Washing Machines*," September 1937, N.I.R.D., University of Reading.

cleansed(*n*). All churns and other vessels in which milk is dispatched by rail or road must comply with the following requirements :—

- i—the name and address of the owner must be permanently marked on the churn or vessel, or on a plate or plates of metal properly soldered or otherwise securely affixed thereto ; and
- ii—the churn or vessel must be provided with a lid without openings, which must be so constructed and fitted as to effectively prevent the access to the milk of dirt, dust or rain-water, or the return to the interior of the receptacle of any milk which may be splashed above the lid(*o*).

It is an offence under the Defence (General) Regulations, 1939, to use, or cause or permit to be used, any churn belonging to another person for any purpose other than the collection or delivery of milk, and it is also an offence to wilfully damage milk churns(*p*). It must be emphasised that the obligation to mark milk churns with the name and address of the owner extends to the name of the owner of the *churn* only. There is no obligation to mark the churn with the name of the owner of the *milk* contained in the churn. As to the obligation to cleanse and sterilise milk churns, see *post*, p. 388.

Milk churns used for the conveyance of skimmed or separated milk must be labelled “ Skimmed Milk ” or “ Separated Milk,” as the case may be, in large and legible type(*q*).

Milk vehicles.—A cowkeeper using a vehicle for the conveyance of milk must at all times keep it clean. No live animal or any article likely to contaminate milk may be conveyed in the vehicle at the same time as milk, and no vehicle which has been used for the conveyance of offensive matter may be used for the conveyance of milk until the vehicle has been thoroughly cleansed and purified(*r*).

Other animals not to be kept in cowshed.—Swine or poultry must not be kept in any cowshed or in any room or shed communicating directly therewith(*s*).

Provisions with respect to infectious diseases.—The powers of local authorities and medical officers of health with respect to infectious diseases occurring on dairy farms are contained in Articles 17, 18 and 19 of the Milk and Dairies Order, 1926, as to which, see *post*, p. 404.

No person who is aware that he is suffering from tuberculosis of the respiratory tract may enter upon any employment or occupation in connection with a dairy which would involve the milking of cows, the treatment of milk or the

(*n*) Art. 27, Milk and Dairies Order, 1926 ; S.R. and O., 1926, No. 821.

(*o*) *Ibid*, Art. 29.

(*p*) Milk (Use of Churns) Order, 1941 ; S.R. and O., 1941, No. 381, as amended by S.R. and O., 1942, No. 7.

(*q*) Art. 30, Milk and Dairies Order, 1926 ; S.R. and O., 1926, No. 821.

(*r*) *Ibid*, Art. 33.

(*s*) *Ibid*, Art. 20.

handling of vessels used for containing milk(*t*). A local authority may, by notice, prohibit any person from continuing in any such employment as is mentioned above, upon a written report of the medical officer of health that such person is suffering from tuberculosis of the respiratory tract and is in an infectious condition. The notice, which must be in the prescribed form, must state the date, not being less than seven days, on or before which the employment must be discontinued. If the person is aggrieved by the action of the local authority, he may appeal to a court of summary jurisdiction and must notify his intention to do so to the clerk of the authority, stating the grounds thereof. If the person concerned in any such action is not himself in default, he is entitled to compensation for any damage he sustains, payable in accordance with the provisions of the Public Health Act, 1936(*u*).

PROVISIONS WITH RESPECT TO DAIRYMEN.

The expression "dairyman" includes an occupier of a dairy, a cowkeeper and a purveyor of milk(*v*). It is clear, therefore, that the provisions of the Milk and Dairies Order, 1926, relating to dairymen, also refers to retail purveyors of milk. For the purposes of the Order of 1926 "dairy" includes, *inter alia*, any milk store, milk shop or other place from which is supplied on or for sale, or in which milk is kept or used for purposes of sale or manufacture into butter, cheese, dried milk or condensed milk for sale, and, in the case of a purveyor of milk who does not occupy any premises for the sale of milk, includes the place where he keeps the vessels used by him for the sale of milk, but it does not include a shop from which milk is not supplied otherwise than in properly closed and unopened receptacles in which it was delivered to the shop or a shop or other place in which milk is sold for consumption on the premises only(*w*). In the case of the sale of milk in sealed containers, although the premises where such milk is sold may not be a dairy (being dependent on whether the bottling takes place on those premises or not), it is quite clear that the person selling the milk is a dairyman and must be registered as such (see *ante*, p. 366).

Lighting and ventilation of dairies.—The provisions relating to lighting and ventilation of dairies (other than rooms used as cold stores) are similar to those for cowsheds (see *ante*, p. 379).

(*t*) Public Health (Prevention of Tuberculosis) Regulations, 1925; S.R. and O., 1925, No. 757.

(*u*) Sect. 278; 29 Halsbury's Statutes, 500.

(*v*) Sect. 100(1), Food and Drugs Act, 1938; 31 Halsbury's Statutes 313.

(*w*) Art. 2(1), Milk and Dairies Order, 1926; S.R. and O. 1926, No. 821.

Artificial lighting of dairies.—The provisions are similar to those for cowsheds (see *ante*, p. 380).

Water supply.—The provisions are similar to those for cowsheds (see *ante*, p. 380).

Floors of dairies.—The floor of every part of a building which is used for the sale of milk or in which milk is kept or used for the purpose of sale or manufacture into butter, cheese, dried milk or condensed milk for sale, *except that part of the building which is used for the sale of milk by retail*, must be constructed of rendered concrete or other durable and impervious material and be so sloped as to ensure the removal of all liquid matter and be provided with channels so constructed, sloped and placed as to convey all liquid to a suitable drain or other place of disposal outside the building(x).

Cleanliness of dairies.—The interior and the furniture and fittings in a dairy must be thoroughly cleansed from time to time as often as may be necessary to secure the maintenance of reasonable cleanliness, and in particular the floor must be thoroughly cleansed with water at least once in every day(x).

Prevention of contamination of milk.—In order to prevent contamination or infection of milk it must not be deposited or kept in any place where it is liable to become contaminated or infected. In particular it must not be deposited or kept—

- i—in any room used as a kitchen, scullery, living-room or sleeping-room ; or
- ii—in any room or part of a building which communicates directly by door, window or otherwise with—
 - (a) any water-closet, earth-closet, privy, cesspool or receptacle for ashes or other refuse ; or
 - (b) any room which is used as a sleeping-room or any room which is occupied by a person suffering from an infectious disease, or which, having been so occupied, has not been subsequently properly disinfected ; or
- iii—in any room or part of a building in which there is any direct inlet to a drain which is not efficiently trapped :

Provided that these requirements do not apply so as to prohibit the deposit or keeping of milk intended for use in the manufacture of butter, cream or cheese in a room used as a kitchen.

Vessels containing milk must be properly covered or the milk otherwise effectively protected from dust, dirt, flies or other sources of contamination. No foul or noxious matter or soiled bed or body clothing may be conveyed through any part of a building used for the keeping or storing of milk(y).

Every person engaged in the conveyance or distribution of milk must use all practicable precautions for preventing the milk from being unnecessarily exposed to heat and from being contaminated by dirt, dust, rainwater or otherwise(z).

(x) *Ibid*, Art. 26.

(y) *Ibid*, Art. 14.

(z) *Ibid*, Art. 32

Cooling of milk.—Every person who receives at a collecting station milk which has not previously been cooled must forthwith cause it to be cooled to a temperature not exceeding 55° Fahr., unless it is to be used in the preparation of butter, cream, cheese or other milk products. Every person who purchases for re-sale milk which has not previously been cooled must cool it to the same temperature unless it is to be used for the manufacture of milk products or it is delivered to the consumer immediately after milking(a).

Cooling, bottling and processing of milk.—The cooling, bottling, sterilising or pasteurising of milk, or any other process connected with milk, must not be carried out in any place where the milk would be liable to contamination arising from any cowshed, stable, or manure-heap, or otherwise, nor may appliances for such processes be kept in such a place(b).

Cleansing and sterilising of milk utensils.—The provisions relating to the cleansing and sterilising of milk utensils by dairymen are similar to those for cowkeepers (see *ante*, p. 383).

Milk churns.—A dairyman may not use for the reception, measurement, storage or delivery of milk, any churn, vessel or other receptacle, if the interior surface is incapable of being readily cleansed(c).

A person who purchases milk for the purposes of his trade or business and empties and returns the churns or other receptacles in which the milk is delivered to him, must cause all such churns and other receptacles, other than bottles, to be thoroughly cleansed and securely closed before they leave his custody or control(d). It is important to note that the onus of cleansing and sterilising milk churns is placed upon dairymen who return churns to the producer, in accordance with article 28 of the Order of 1926, and on producers who send milk in churns to dairymen, in accordance with Article 21 of the Order. Although there is no general standard of cleanliness for milk churns, the results of the examination of washed milk churns carried out for the purposes of the National Milk Testing and Advisory Scheme (see *post*, p. 391) are classified as follows :—

Colony count per churn.			Classification.
Not more than 50,000	..	..	Satisfactory (S).
More than 50,000 and less than 250,000			Fairly satisfactory (FS).
250,000 and over	..	..	Unsatisfactory (US).

A " wet " churn must be degraded to the next class below, because it is unlikely to remain in a satisfactory condition(e).

(a) S.R. and O., 1926, No. 821, Art. 24(2). (b) *Ibid.*, Art. 16.
(c) *Ibid.*, Art. 27. (d) *Ibid.*, Art. 28.
(e) Ministry of Agriculture and Fisheries, National Milk Testing and Advisory Scheme, Form No. C168/TPY.

In examining churns for the purposes of the above scheme, the churns must be examined within an interval of not less than half an hour and not more than one hour after washing, and the visual examination must be directed to the following points :—

- i—bad dents, rusting of inner surfaces, open seams, poor lids ;
- ii—presence or absence of folk, scale or milk solids ;
- iii—wetness of churns. The degree of wetness must be recorded as—
 - (a) *dry*—no visible moisture in the churn ;
 - (b) *moist*—beads of moisture, but no visible pool at the bottom of the churn ; and
 - (c) *wet*—obvious pool of water at the bottom of the churn(e).

The provisions relating to churns used by cowkeepers apply in the case of churns used by dairymen(see *ante*, p. 384).

Unless expressly authorised to do so by statute, no person may open a churn or other receptacle containing milk or transfer milk from one receptacle to another in any railway van or on any railway station. The purchaser or his agent may, however, when taking delivery of the milk, open the churn or other receptacle for the purpose of checking and sampling the milk(*f*). It should be noted that sampling officers (see *ante*, p. 51) are empowered to take samples of milk at the place of delivery, which is often a railway station(*g*). An inspector of weights and measures is also authorised to open any receptacle containing milk, where any question arises as to the weight or measure of milk contained in it(*h*).

Milk bottles.—It is an offence to fill or open milk bottles except on registered dairy premises(*i*). Action may be taken, therefore, where roundsmen are seen filling milk bottles in the street or elsewhere than on registered dairy premises.

Milk vehicles.—The provisions relating to vehicles used for the conveyance of milk apply to dairymen as well as cowkeepers (see *ante*, p. 385).

Animals not to be kept in dairy.—Swine or poultry must not be kept in a room in which milk or milk utensils are kept or in any room or shed communicating directly therewith(*k*).

(e) See footnote, p. 388.

(f) Art. 31(1), Milk and Dairies Order, 1926 ; S.R. and O., 1926, No. 821.

(g) See sect. 68, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 294 ; and see *ante*, p. 51.

(h) Sect. 10(2), Sale of Food (Weights and Measures) Act, 1926 ; 20 Halsbury's Statutes 423.

(i) Art. 31(2), Milk and Dairies Order, 1926 ; S.R. and O., 1926, No. 821.

(k) *Ibid*, Art. 20.

Provisions with respect to infectious diseases.—The powers of local authorities and medical officers of health with respect to infectious diseases occurring amongst persons having access to milk, are contained in Articles 17, 18 and 19 of the Milk and Dairies Order, 1926, as to which, see *post*, p. 404.

SAMPLING AND TESTING OF MILK.

In order to ascertain the condition of milk sold to the consumer, a sampling officer (see *ante*, p. 51) of a food and drugs authority (see *ante*, p. 19) or a local authority (see *ante*, p. 18) may procure samples of milk for analysis or for bacteriological or other examination—as to sampling and examination of samples of food generally, see Chapter 4, *ante*, p. 50.

A county council or local authority may provide facilities for bacteriological and other examinations of samples of milk(*l*).

IMPORTED MILK.

It is an offence to import into the United Kingdom any adulterated or impoverished milk, except in containers conspicuously marked with a name or description indicating that the milk has been so treated, or milk which does not comply with the Public Health (Imported Milk) Regulations, 1926(*m*), which require all imported milk, including skimmed milk, to be—

- i—free from tubercle bacilli ; and
- ii—to contain not more than 100,000 bacteria per cubic centimetre.

Importers of milk must be registered with port health authorities or other riparian sanitary authorities, and such authorities may remove from the register a consignee of unsatisfactory imported milk. There is a right of appeal to a court of summary jurisdiction within a period of 21 days, and from the decision of such a court either party may appeal to quarter sessions. As to imported food generally, see Chapter 13, *ante*, p. 332.

MILK DEPOTS.

A local authority outside London, which is not a welfare authority(*n*) for the purposes of Part VII of the Public Health

(*l*) Sect. 67, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 294.

(*m*) S.R. and O., 1926, No. 820.

(*n*) "Welfare authority" is the council of a county borough, or county district who immediately before 1st October, 1937, was the authority for the purposes of the Notification of Births Acts, 1907 and 1915—sect. 200, Public Health Act, 1936 ; 29 Halsbury's Statutes 460.

Act, 1936, may, with the approval of the Minister of Health, establish depots for the sale, at not less than cost price, of milk specially prepared for consumption by infants under two years of age, and for that purpose may purchase and prepare milk and provide any necessary plant(o).

NATIONAL MILK TESTING AND ADVISORY SCHEME.

Although local authorities and their officers are not directly concerned in the National Milk Testing and Advisory Scheme, it impinges on their work in connection with milk and dairies, especially in relation to the production of milk, and will continue to do so until the transfer of powers authorised by the Food and Drugs (Milk and Dairies) Act, 1944 (see *ante*, p. 361), takes place, it is desirable to include in this chapter a short account of the scheme.

In the autumn of 1941 the Ministry of Food, in collaboration with the Ministry of Agriculture and Fisheries, organised an experimental milk-testing and improvement scheme, which was carried out for a period of three months in the counties of Berkshire, Carmarthen, Cornwall and Shropshire. In May 1942 the Government issued the White Paper(p) on milk policy (see *ante*, p. 360) which outlined proposals for increasing production and consumption of milk, in which the following paragraph relating to the *quality of milk* appeared :—

“ *Quality.* ”—The price paid by the Milk Marketing Board to the producer and by the Ministry of Food to the Milk Marketing Board, will vary according to the quality of the milk as revealed by a test of the milk itself. The standards of quality and the testing arrangement will be prescribed and the scheme will be administered by the Minister of Agriculture and Fisheries with the assistance of an Advisory Committee, on which the interested Departments, producers and distributors will be represented. The scheme will apply to all milk sold by producers. Milk will be classified according to the testing results into “ Market,” “ Salvage ” and “ Rejected.” The object of the scheme is primarily to prevent milk of poor keeping quality passing into bulked supplies or reaching the liquid market direct. The scheme will not replace the existing standards of “ Tuberculin-Tested ” or “ Accredited ” ; thus milk which is not “ T.T.,” “ Accredited ” or “ Market,” but is suitable for certain manufacturing purposes will be paid for at a “ Salvage ” price, to be determined by the Minister of Food in consultation with the Milk Marketing Board. Milk not fit for manufacture will be rejected and no price will be paid for it. Investigations will be made into the causes of milk not reaching “ Market ” standard and steps will be taken to remedy matters.

(o) Sect. 26, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 271.
(p) Cmd. 6362.

In June 1942 the Ministry of Agriculture and Fisheries announced that the Advisory Committee, referred to above, had been appointed, consisting of representatives of the Ministries of Agriculture and Fisheries, Food and Health, Milk Marketing Board, National Farmers Union and the Central Milk Distributive Committee. It was also stated that the Scheme was being put into immediate operation and under it all milk delivered from farms would be tested at depots, dairies and elsewhere by a simple standard method. Facilities for technical advice to milk producers and distributors also formed part of the Scheme. It was contemplated that on the basis of the Scheme, when fully operative, milk produced on farms would be paid for at differential rates, milk found on test not to be of satisfactory keeping quality to be paid for at a lower rate. *It was emphasised that the Scheme was concerned essentially with the keeping quality of ordinary milk and that it would not replace any existing legislation*(q). Also in June 1942 the Ministry of Agriculture and Fisheries communicated with War Agricultural Executive Committees, informing them of the details of the Scheme and intimating that it would be carried out under the general supervision of the Provincial Dairy Bacteriologists, but that the farm advisory work could be most appropriately undertaken by such committees. *It was also stated that the Executive Committee should secure the collaboration of sanitary authorities.* The committees were advised to set up a special sub-committee to co-ordinate the advisory arrangements, secure the necessary co-operation with local authorities, and generally supervise this part of the Scheme ; on such sub-committees, in addition to the Provincial Dairy Bacteriologist and dairy trade representatives, the Divisional Inspector of the Ministry's Animal Health Division, would be co-opted, together with representatives of any other interests thought desirable. In most counties representatives of the sanitary officers are members of the sub-committee.

In 1943 the Ministry of Health issued a circular(r) dealing specifically with the steps necessary to secure the co-operation of local authorities in the working of the Scheme, of which the following paragraph is of particular importance :—

“ In order to secure the fullest co-operation, it is desirable that in each county the views of the authorities concerned should be available to the appropriate sub-committee of the War Agricultural Executive Committee for that county. The matter appears to the Minister to be one for local arrangement, but it is suggested that the object in view can best be secured if in each county (a) the county council, and (b) the authorities responsible for the Milk and Dairies Orders are willing to

(q) See Circular 2669, Ministry of Health, July 1942.

(r) Circular 2761, Ministry of Health, 9th February, 1943.

authorise a suitable professional officer or officers (*e.g.* medical officer of health or sanitary inspector) to serve on the county sub-committee of the War Agricultural Executive Committee. Since, however, these sub-committees have, the Minister understands, a very small membership, it will be desirable to arrange for not more than one or two persons to act in each county on behalf of the authorities responsible for the Milk and Dairies Orders in that county, and it is understood that arrangements of this kind have already been made in some counties by the appointment of one or two sanitary inspectors. The Minister has instructed his principal regional medical officers to give any assistance they can in order to facilitate such arrangements, and he is informed that the Minister of Agriculture and Fisheries is approaching War Agricultural Executive Committees upon the matter."

The following is a short general account of the Scheme, which has been summarised from the various leaflets issued by the Ministry of Agriculture and Fisheries :—

The main objects of the Scheme are—

- 1—To encourage and assist milk producers and distributors to maintain a satisfactory standard of keeping quality for all milk supplies.
- 2—To reduce the loss of milk from souring or tainting, and in particular to prevent the inclusion of unsatisfactory milk in bulked market milk.
- 3—To provide information on which to base a scheme of differential prices to producers in accordance with the keeping quality of milk delivered.
- 4—To assist milk depots, creameries and dairies by advice on the efficient handling of milk supplies.
- 5—To provide information which will enable county and provincial advisory services to be used to the best advantage.

Scope and Operation of the Scheme.—Responsibility for milk testing lies with the Provincial Advisory Dairy Bacteriologists, one or more of whom is stationed in each of the Advisory Provinces of the Ministry of Agriculture.

For the purposes of the Scheme, milk supplies have been divided into two main categories—

- 1—*Those delivered direct to depots, creameries and dairies receiving milk from at least 100 producers or an intake of at least 2,000 gallons per day ("large units").*—These large units provide their own laboratories and testing-staff and carry out the standard tests under the general supervision of the Advisory Bacteriologists. The laboratories and testers are licensed for this purpose on behalf of the Minister of Agriculture by the Advisory Bacteriologists, who also arrange courses of training for testers and other laboratory staff.
- 2—*Those handled by small units (i.e. below the datum line for large units) and by producer-retailers.*—Some of the smaller units possess laboratory facilities and trained staff and their position is similar to that of the large units referred to above. Where the smaller units do not possess laboratory facilities or trained staff, certificated samplers are

appointed under the direction of the Advisory Bacteriologist, to sample the milk at the point of first delivery (or in the case of producer-retailers, before sale to the consumer). The samples are sent for testing either to the Advisory Bacteriologists' central or area laboratories or by arrangement to the licensed laboratories of other dairies in the locality possessing these testing facilities. It has not so far been possible to devise a uniform method for sampling milk from small units and producer-retailers, as circumstances vary locally. Experimental methods are, however, being carried out in the different provinces and the "under datum" units and producer-retailers are gradually being brought within the Scheme.

Advisory work on the farm is the responsibility of the County War Agricultural Executive Committees. Most of these have appointed special sub-committees to administer the work, and on these all interested bodies are normally represented, *i.e.* producers, dairy trade, Milk Marketing Board, the Advisory Dairy Bacteriologist, the Advisory Staffs, public health authorities and veterinary services. County farm advisory work is undertaken by the advisory officers of the War Agricultural Executive Committees usually under the direction of the County Milk Production Officer.

Milk Testing.—All supplies of milk, including designated milks, delivered from farms to any destination may be submitted to test. The ultimate goal is the routine twice-monthly testing of the milk of every producer, with an additional platform rejection test on milk of doubtful quality immediately upon arrival at depots, creameries and dairies.

Standard Routine Test.—It is generally accepted that prevention of faulty milk production, involving testing at regular intervals throughout the year accompanied by the necessary advisory services, is the soundest system on which to build permanently a satisfactory milk supply. It is, moreover, agreed that this is the only practical system on which price differentiation based on keeping quality, could be introduced. A Standard Routine Test has, therefore, been adopted for the twice-monthly testing of the milk supplies of all producers. The technique of the test has been approved by the Advisory Committee (see *ante*, p. 97).

Upon arrival at the depot, creamery or dairy, the milk of each producer is sampled and subjected to a *resazurin* test. Resazurin is a dyestuff which changes colour when added to milk containing large numbers of the type of bacteria responsible for souring. The extent of the change of colour from the original blue through pink to colourless, depends on the degree of activity of the organisms present in a given milk sample. The resulting shade obtained for each sample is then compared with standard colour discs which are numbered 0 to 6, so giving a "disc-reading," classified as follows:—

Disc-reading 4 to 6 inclusive, milk of *good* keeping quality (Category A).

Disc-reading 1 to 3½ indicates milk of *moderate* keeping quality (Category B).

Disc-reading ½ or 0 indicates milk of *poor* keeping quality (Category C). (This category includes milk which might quickly turn sour under summer conditions.)

A producer whose milk falls into category C is immediately notified and informed that an advisory visit may be expected from a representative of the County War Agricultural Committee. The Committee also is supplied with the result of the test so that arrangements can be made for such a visit. This procedure is also adopted in December, January and February in respect of milks in the lower part of category B, as these would probably fall into category C during the summer months.

Platform Rejection Test.—A relatively small quantity of milk of really poor keeping quality, if added to a much larger bulk of average milk, is likely to cause the loss of the whole consignment through souring. One of the primary objects of the Scheme is to keep this poor-quality milk off the market, particularly in summer months. For this purpose it has been necessary to devise a test sufficiently rapid to enable the results to be used in deciding how to deal with milk from each producer.

On arrival at the collecting depot, creamery or dairy, each producer's milk should be inspected by the platform examiner, who will set aside all milk which, from appearance or smell, or from previous records, is suspected to be of doubtful quality. This milk is then sampled and tested by the creamery tester, who uses the ten-minute resazurin test, similar in principle to the standard routine test, on which the milk is graded according to colour-disc numbers. The technique of this test has also been approved by the Advisory Committee (see *ante*, p. 95).

Two specific classes are laid down under this test according to disc numbers.

Disc-reading 4 or higher indicates milk of "market" standard ;

Disc-reading $\frac{1}{2}$ or 0 indicates milk of "rejection" standard.

All milk falling below market class is potentially of poor keeping quality. The buyer is justified in summarily returning to the producer milk of disc-reading $\frac{1}{2}$ or 0. On the other hand, milk of "market" standard may be rejected outside the Scheme on grounds other than the test result, *e.g.* taints due to feed, or chlorine or other disinfectants. Milk of disc-reading 1 to $3\frac{1}{2}$ may or may not be marketable, and its disposal will be determined by the buyer according to the facilities which exist for the utilisation of such milk. Although one dairy with adequate facilities for immediate processing might accept milk with a disc-reading falling within these limits, another dairy without such facilities might reject the milk and return it to the producer. Moreover, while milk in this class might be suitable for the local market, it might be essential only to use milk with disc-readings higher than $3\frac{1}{2}$, *i.e.* "market" class milk, for bulk consignments to distant markets. Thus, the disposal of milk of disc-reading 1 to $3\frac{1}{2}$ is determined by disc-reading in conjunction with facilities for utilisation and not by disc-reading alone.

Churn Milk Plant Testing and Advisory Service.—The Scheme includes arrangements for the regular testing for bacteriological cleanliness of milk containers sent back to farms from depots, creameries and dairies. Under the test, churns are graded as "Satisfactory," "Fairly Satisfactory" or "Unsatisfactory," according to bacterial counts (see *ante*, p. 388). When churns are found to be at fault the matter is taken up by the Advisory Bacteriologist with the creameries, etc., concerned, and advice is given on the technique of cleansing.

Unsatisfactory producers and dairies.—Where milk producers and dairies are found to be persistently unsatisfactory and yet are fully able to remedy the causes, information in regard to such cases may be made available for action outside the Scheme. Thus, particulars of persistently unsatisfactory producers may be sent to local sanitary authorities for action under the Milk and Dairies Orders, or to the Milk Marketing Board for action by that Board ; and particulars of unsatisfactory dairies may similarly be sent to local sanitary authorities or to the Ministry of Food, or other action may be taken.

Licensing authorities will be notified of samples of designated milks found to fall into category C or to be rejected and having a disc-reading of $3\frac{1}{2}$ or less (as to designated milk, see *post*, pp. 410 *et seq*).

CHAPTER 15.

MILK AND DISEASE.

INTRODUCTION.

The administrative and legal measures adopted for the control of the milk industry are designed to secure milk which is of a prescribed standard of quality (primarily a matter of chemical composition) ; which will keep sweet for a reasonable length of time, even in the hot days of summer ; and which will be free from contamination by pathogenic organisms likely to cause disease or illness in human beings. The latter requirement is obviously the most important, as it is futile to produce milk containing high percentages of milk fat and solids-not-fat, and of good keeping quality, if it is contaminated by pathogenic organisms which are likely to cause disease in persons consuming it. This chapter deals with the steps to be taken by local authorities and their officers with the object of preventing the spread of disease through the consumption of milk.

With the object of ensuring a " safe " milk supply, that is to say, milk that is free from pathogenic organisms, the Government outlined their policy in 1943(a), which is already in process of being implemented (*e.g.* see the Food and Drugs (Milk and Dairies) Act, 1944—dealt with in detail in chapter 14, *ante*, p. 361). When the full policy is brought into operation the sale of milk for human consumption in scheduled areas(b) will be restricted to milk which is either—

- i—heat-treated as defined by Order(c) ;
- ii—sold as Tuberculin Tested milk(d) ; or
- iii—sold as Accredited milk(e) by a retailer (whether a producer-retailer or dairyman) who sells the milk of a single Accredited herd.

The fact that milk is an almost perfect food for human beings renders it particularly liable to be the means of the spread of disease, arising either as a result of disease in the animals from which the milk is obtained or contamination of the milk at some stage during production, transport, handling or distribution to the consumer.

(a) Cmd. 6454, 1943.

(b) A " scheduled area " is one where the rationalisation of deliveries has taken place, representing areas with a population of at least 10,000.

(c) Defence (General) Regulation No. 55G, 20th January, 1944 ; S.R. and O., 1944, No. 65.

(d) See *post*, p. 418.

(e) See *post*, p. 426.

The following diseases of bovines may result in disease or illness in human beings who consume milk from affected animals :—

Tuberculosis ;
Contagious abortion ;
Mastitis ;
Foot-and-mouth disease ;
Anthrax ;
Johne's disease ; etc.

Tuberculosis (causing that disease in man) ; *contagious abortion* (causing undulant fever in man) ; and *mastitis* (which may result in gastro-intestinal disturbances in man and, in more rare instances, scarlet fever and sore throat(*f*)) are the diseases of bovines most likely to cause disease in human beings.

Persons concerned in the handling of milk at any stage from production on the farm to consumption in the home may be the means of contaminating the milk by the organisms responsible for any of the following diseases :—

Typhoid and paratyphoid fever ;
Diphtheria ;
Scarlet fever ;
Septic sore throat ;
Diarrhoea ; and
Dysentery, etc.

The following is a summary of 612 milk-borne outbreaks in the U.S.A. from 1908 to 1926(*g*) :—

Summary of 612 Milk-borne Outbreaks in U.S.A., 1908–26.

Disease.	Number of outbreaks.	Number of cases (incomplete).	Number of deaths (incomplete).
Typhoid fever	479	14,968	219
Paratyphoid	7	434	15
Diarrhoea and dysentery	6	92	5
Septic sore throat	42	21,045	139
Scarlet fever	40	3,939	20
Diphtheria	26	971	7
Miscellaneous diseases	12	878	5
Total	612	42,327	410

(*f*) See Wilson, G. S., "The Pasteurisation of Milk," 1942. London, Ed. Arnold & Co., p. 9.

(*g*) Jameson and Parkinson, "Synopsis of Hygiene," Eighth Edition, 1944. London, J. & A. Churchill, p. 356.

Jameson and Parkinson state that the characteristics of milk-borne outbreaks are as follows :—

- 1—The outbreak is often explosive in onset, but not always so ;
- 2—A high percentage of cases obtain their milk from the same producer or distributor ;
- 3—Cases occur among users of milk, ice-cream, etc. ;
- 4—Multiple simultaneous cases often occur in the same household ;
- 5—The incubation period of the disease may be shortened ; and
- 6—When the infected milk supply is stopped, the outbreak subsides(*h*).

In order that milk suspected of causing or likely to cause disease may be submitted for bacteriological or other examination, a sampling officer (see *ante*, p. 51) is empowered by section 68 of the Act of 1938 (see *ante*, p. 51) to obtain samples of milk at any time before delivery to the consumer, and a county council or local authority may provide facilities for bacteriological and other examinations of samples of milk(*i*). As to sampling and examination of foods generally, see Chapter 4, *ante*, pp. 50, *et seq.*

DISEASES OF BOVINES.

Section 25 of the Food and Drugs Act, 1938, *infra*, prohibits the sale of tuberculous milk or the milk of cows suffering from certain forms of tuberculosis or other diseases.

Section 25, Food and Drugs Act, 1938.—Prohibition of sale of tuberculous milk, or milk of cows suffering from tuberculosis, etc.

(1) No person shall—

(a) sell, or offer or expose for sale, for human consumption ;
or

(b) use in the manufacture of products for sale for human consumption,

the milk of any cow which to his knowledge has given tuberculous milk, or is suffering from emaciation due to tuberculosis, or from tuberculosis of the udder or any other disease of cows to which this section applies.

- (2) In proceedings under this section, the defendant shall be deemed to have known that a cow had given tuberculous milk, or was so suffering as aforesaid, if he could with ordinary care have ascertained the fact.
- (3) A person who contravenes any of the provisions of this section shall be guilty of an offence.
- (4) The diseases of cows to which this section applies are those specified in Part I of the First Schedule of this Act and any other diseases to which the provisions of this section are extended by Milk and Dairies Regulations.
- (5) It shall be the duty of the council of every county and county borough to enforce the provisions of this section.

(*h*) *Ibid.*

(*i*) Sect. 67, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 294 ; and see *ante*, p. 80.

It must be emphasised that the prohibition of the sale of milk from tubercular cows is restricted to those cases where the animal concerned is suffering from one or more of the forms specified in section 25, *supra*. It is not possible (or indeed practicable) to prohibit the sale of milk from *all* cows suffering from *any* form of tuberculosis. The other diseases of cows which are subject to the provisions of section 25, *supra*, are as follows :—

Acute mastitis ;
 Actinomycosis of the udder ;
 Suppuration of the udder ;
 Any infection of the udder or teats
 which is likely to convey disease ;
 Any comatose condition ;
 Any septic condition of the uterus ;
 Anthrax ; and
 Foot-and-mouth disease(ii).

It should be noted that this list of diseases may be extended by Milk and Dairies Regulations made by the Minister of Health and the Minister of Agriculture and Fisheries, in accordance with the provisions of section 20 of the Act of 1938 (see *ante*, p. 362). It should also be observed that the *duty* of enforcing the provisions of section 25, *supra*, is placed on county and county borough councils, but a local authority *may* enforce the section if they so desire(k).

A person charged with an offence under section 25, *supra*, may avail himself of the provisions of section 83 of the Act of 1938 (see *ante*, p. 13) and have brought before the court some other person whom he alleges is responsible for the default in question. This procedure would probably apply in the case of action being taken against a *retailer* of tuberculous milk who obtains his milk from a wholesaler or a producer. In actual practice, however, it is unlikely that an authority would proceed against the retailer, action being confined to proceedings against the producer whose cows are suffering from the disease. As pointed out previously (see *ante*, p. 109), it is the normal practice to take samples of the producer's milk for examination for the presence of tubercle bacilli, rather than sampling from the retailer. Where, however, milk sampled in course of retail delivery is found to contain living tubercle bacilli and it is not possible to say with certainty from which farm it is obtained (as is generally the case with mixed milk), it is necessary to sample separately each individual farmer's milk on arrival at the retailer's premises.

Where a cow is found to be excreting tubercle bacilli in its milk or to be suffering from *certain forms* of tuberculosis the animal must be slaughtered in accordance with the provisions

(ii) Sched. 1(1), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 318.

(k) See *ibid*, sect. 65(3) ; 31 Halsbury's Statutes 293 ; and see *ante*, p. 22.

of the Tuberculosis Order, 1938(*l*). As to the procedure to be followed in the sampling of milk for biological examination for the presence of tubercle bacilli, see *ante*, p. 102, and for the slaughter of infected animals, see *post*, p. 534.

MILK-BORNE DISEASES.

Milk-borne diseases, as distinct from diseases of bovines, are defined in the Act of 1938(*m*) as follows :—

Enteric fever (including typhoid and
paratyphoid fevers) ;
Dysentery ;
Diphtheria ;
Scarlet fever ;
Acute inflammation of the throat ;
Gastro-enteritis ; and
Undulant fever.

Section 37 of the Act of 1938, *infra*, empowers the medical officer of health, if he has reasonable grounds for suspecting that any ice-cream, or substance intended for use in the manufacture of ice-cream, is likely to cause any milk-borne disease, to give notice to the person in charge thereof that, until further notice, the ice-cream or substance in question, or any specified portion of it, is not to be used for human consumption.

Section 37, Food and Drugs Act, 1938.—Provisions as to ice-cream likely to cause milk-borne disease.

- (1) Every manufacturer of, or dealer in, ice-cream shall, upon the occurrence of any milk-borne disease among the persons living or working in or about the premises on which the ice-cream is manufactured, stored or sold, forthwith give notice thereof to the medical officer of health of the district and, if he fails to do so, shall be liable to a fine not exceeding five pounds.
- (2) If the medical officer of health of a district has reasonable grounds for suspecting that any ice-cream, or substance intended for use in the manufacture of ice-cream, is likely to cause any milk-borne disease, he may give notice to the person in charge thereof that, until further notice, the ice-cream or substance in question, or any specified portion thereof, is not to be used for human consumption and either is not to be removed, or is not to be removed except to some place specified in the notice.
A person who uses or removes any ice-cream or substance in contravention of the requirements of a notice given under this subsection shall be liable to a fine not exceeding ten pounds.
- (3) If on further investigation the medical officer is satisfied that the ice-cream or substance in question may safely be used for human consumption, he shall forthwith withdraw his notice, but, if he is not so satisfied, he shall cause it to be destroyed, and he shall also cause to be destroyed any other ice-cream or such substance as aforesaid then on the premises as to which he is not so satisfied.

(*l*) S.R. and O., 1938, No. 165 ; and see *post*, p. 532.

(*m*) Sched. 1(2), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 318.

- (4) Subject as hereinafter provided, where a notice given under subsection (2) of this section is withdrawn by the medical officer, or the medical officer acting under subsection (3) of this section causes any ice-cream or other substance to be destroyed, the local authority shall compensate the owner of the ice-cream or other substance in question for any depreciation in its value resulting from the action taken by the medical officer or, as the case may be, for the loss of its value :

Provided that—

- (a) no compensation shall be payable under this section in respect of the destruction of any ice-cream or substance if the local authority prove that it was likely to cause milk-borne disease ;
- (b) no compensation shall in any case be payable under this section—
 - (i) in respect of any ice-cream or substance manufactured on, or brought within, any premises while a notice given under subsection (2) of this section with respect to anything on those premises was operative ; or
 - (ii) in any case where the owner of the ice-cream or substance in question has failed to give a notice which he was required by subsection (1) of this section to give.

For the purposes of this subsection, the value of any ice-cream or other substance shall not be assessed at a sum exceeding the cost incurred by the owner in making or purchasing it.

- (5) In this section the expression “ milk-borne disease ” means any disease specified in Part II of the First Schedule to this Act, and any other disease which the Minister may by order declare to be for the purposes of this section a milk-borne disease.

It should be noted that the expression “ ice-cream ” includes any similar commodity⁽ⁿ⁾. For further provisions with respect to ice-cream, see Chapter 7, *ante*, p. 211.

In cases where there is any dispute as to the payment of compensation in accordance with subsection (4), *supra*, the matter must be determined by arbitration, provided that if the compensation claimed does not exceed £50, all questions as to the fact of damage or loss, liability to pay compensation and the amount, may be determined by a court of summary jurisdiction on the application of either party^(o). In arbitrations under the Act of 1938, the reference is to a single arbitrator to be appointed by agreement between the parties or, in case of disagreement, by the Minister of Health^(p).

Every person selling, etc., ice-cream, etc., from stalls, carts, baskets, etc., must have his name and address legibly displayed on the stall, vehicle or container, in accordance with

(n) Food and Drugs Act, 1938, sect. 100 ; 31 Halsbury's Statutes 313.

(o) *Ibid*, sect. 86 ; 31 Halsbury's Statutes 307.

(p) Sect. 303, Public Health Act, 1936 ; 29 Halsbury's Statutes 516 ; incorporated in the Act of 1938 by sect. 96.

the provisions of section 16 of the Act of 1938, *infra*. It should be noted that this requirement may be extended, by resolution of the local authority, to apply to all kinds of foods or to particular foods specified in the resolution.

Section 16, Food and Drugs Act, 1938.—Notices to be displayed by persons selling ice-cream, etc., from stalls, carts, baskets, etc.

- (1) Every dealer in ice-cream who in a street or other place of public resort sells, or offers or exposes for sale, ice-cream from a stall, or from a cart, barrow or other vehicle, or from a basket, pail, tray or other container used without a stall or vehicle, shall have his name and address legibly and conspicuously displayed on the stall, vehicle or container, as the case may be, and, if he fails to comply with the requirements of this section, shall be liable to a fine not exceeding forty shillings.
- (2) A local authority may at any time resolve that, as from such date, not being less than four weeks from the passing of the resolution, as may be specified therein and until the resolution is revoked, this section shall apply within their district in relation to all kinds of food, or to any kinds of food specified in the resolution, as it applies in relation to ice-cream, and while any such resolution is in force, this section shall apply accordingly :

Provided that nothing in this subsection shall have effect in relation to milk.

- (3) A local authority shall forthwith give notice to the Minister of the passing or revocation of a resolution under this section, and shall take such steps as he may direct for publishing notice of the coming into operation, or revocation, of any such resolution.

There is no definition of "street or other place of public resort" in the Act of 1938. Under a local Act containing similar words it was held that a piece of ground habitually used by the public might be a place of public resort even though it was so used without the consent of the owner(*q*).

Regulations made under section 20 of the Act of 1938 (see *ante*, p. 362) may include provisions with respect to the precautions to be taken for protecting milk against infection or contamination ; for preventing danger to health from the sale of infected, contaminated or dirty milk, and in particular for prohibiting the supply or sale of milk suspected of being infected ; and imposing obligations on dairymen and their employees in regard to cases of infectious illness. With a view to preventing the contamination or infection of milk, rules are prescribed in Article 14 of the Milk and Dairies Order, 1926(*r*) which provides, *inter alia*, that milk may not be deposited or kept in any place where it is liable to become contaminated or infected, including any kitchen, scullery,

(*q*) *Kitson v. Ashe*, [1899] 1 Q.B. 425 ; 25 Digest 436, 331.

(*r*) S.R. and O., 1926, No. 821, amended by S.R. and O., 1938, No. 217 ; and see *ante*, p. 387.

living-room or sleeping-room, any room *communicating* with a sanitary convenience or refuse receptacle or with a room in which a person is or has suffered from an infectious disease until it has been properly disinfected. Milk vessels must be protected from contamination by dust, dirt, flies or other sources of contamination, and no noxious matter or soiled bed or body clothing may be conveyed through any part of a building used for the keeping or storage of milk.

Article 17 of the Milk and Dairies Order, 1926, *infra*, requires every person who has access to milk or to milk vessels to notify his employer if any member of his family is suffering from any *infectious disease*, and the employer must immediately inform the medical officer of health of the district. The expression "*infectious disease*" is defined in Article 2 of the Order of 1926, as meaning "dysentery and any infectious disease to which the Infectious Disease (Notification) Act, 1889(s), applies." The Act of 1889 has been repealed and replaced by Part V of the Public Health Act, 1936(t), which requires the following diseases to be notified to the medical officer of health(u) :—

- 1—smallpox ;
- 2—cholera ;
- 3—diphtheria ;
- 4—membraneous croup ;
- 5—erysipelas ;
- 6—scarlatina or scarlet fever ;
- 7—typhus fever ;
- 8—typhoid fever ;
- 9—enteric fever ;
- 10—relapsing fever ; and
- 11—as respect any particular district, any infectious disease to which Part V of the Act of 1936 or any corresponding enactment repealed by that Act had been applied by the local authority of the district in manner provided by that Part of that Act(v).

Article 17, Milk and Dairies Order, 1926.

- (1) Every person having access to the milk or to the churns or other milk receptacles in or about any registered premises, as soon as he becomes aware that any member of his household is suffering from any infectious disease, shall immediately notify the occupier of such premises of the fact, and the occupier shall immediately notify the medical officer of health of the district in which the premises are situate unless notification has already been given to that officer.

(s) 13 Halsbury's Statutes 811.

(t) 29 Halsbury's Statutes 427.

(u) Sect. 343, Public Health Act, 1936 ; 29 Halsbury's Statutes 536.

(v) As to infectious and notifiable diseases generally, see the author's "*Sanitary Administration*," Second Edition, 1944, London, Butterworth & Co., Ltd., pp. 417 *et seq.*

- (2) Where the medical officer of health of any sanitary district becomes aware that any such person is suffering from an infectious disease or has recently been in contact with a person so suffering he shall forthwith notify the occupier of such premises of the fact, and where the council of such sanitary district are not the registering authority for the locality in which the premises are situate he shall also notify the medical officer of health of the registering authority.

The medical officer of health is empowered by Article 18 of the Milk and Dairies Order, 1926, *infra*, to prohibit the sale for human consumption of milk which he considers to be the cause or likely to be the cause of infectious disease.

Article 18, Milk and Dairies Order, 1926.

- (1) Where the medical officer of health of a sanitary district is in possession of evidence that any person is suffering from infectious disease caused by the consumption of milk supplied within the district from any registered premises or that the milk at any registered premises within the district has been infected with such disease, he may by a notice in writing to the occupier of such premises specifying such evidence require, if the premises are within the district, that no milk from such premises (or, if the notice so provides, no milk received at such premises from any specified source) shall be sold for human consumption, or used in the manufacture of products for human consumption, or, if the premises are without the district, that no such milk shall be sold for human consumption within the district.
- (2) Any such notice shall operate for such period not exceeding twenty-four hours as may be specified therein from the time of the receipt of the notice but may be renewed for a further period or periods of twenty-four hours. The notice shall forthwith be withdrawn as soon as the medical officer of health is satisfied that the milk is no longer likely to cause infectious disease.
- (3) Where the medical officer of health serves such a notice he shall forthwith report the matter to the sanitary authority, and if the premises are within the district he shall forthwith endeavour to ascertain the causes of the infectious condition of the milk.
- (4) Where the milk in respect of which a notice is given under this article is obtained from any registered premises without the district, the medical officer of health shall forthwith send a copy of the notice to the medical officer of health of the sanitary district from which the milk is obtained.
- (5) No person shall sell milk for human consumption or use milk or sell milk for use in the manufacture of products for human consumption contrary to the terms of a notice given by the medical officer of health under this article.
- (6) Where any person sustains any damage or loss by reason of a notice issued under this article he shall be entitled to full compensation from the sanitary authority in case it shall appear that no infectious disease was in fact caused by the consumption of milk from the premises to whose occupier the notice was addressed or as the case may be that no milk at such premises had been infected with such disease. Any dispute as to the right to or the amount of such compensation shall be settled by arbitration in the same manner as provided by the Public Health Act, 1875, and any sum awarded as

compensation shall be recoverable as a civil debt ; Provided that if the compensation claimed does not exceed twenty pounds it may at the option of either party instead of being settled as hereinbefore provided be settled by and recoverable before a court of summary jurisdiction.

It should be noted that the prohibition is operative for a period of twenty-four hours only, subject to renewal at the end of that time, but the medical officer of health may take action without prior reference to the local authority, although he must report the matter to the authority forthwith.

Where he considers it necessary to do so, the medical officer may examine any person on dairy premises and may prohibit the employment of such person in the milking of cows, handling milk vessels or in any way taking part in the production, distribution or storage of milk, in accordance with Article 19 of the Order of 1926, *infra*.

Article 19, Milk and Dairies Order, 1926.

- (1) Where the medical officer of health of the registering authority by reason of such notification or otherwise suspects that any of the persons in or about any registered premises who have access to the milk or to the churns or other milk receptacles is suffering from an infectious disease or has recently been in contact with any person so suffering or is in such a condition that there is a danger of his transmitting an infectious disease he may give notice to the occupier of such premises that he considers it necessary to make an examination of any or all of such persons ; and where he gives such notice, the said occupier and every person concerned shall give the medical officer of health all reasonable facilities for making such examination.
- (2) Where from the result of any such examination or otherwise the medical officer of health is of opinion that the employment of any such person is likely to lead to the spread of infectious disease, the medical officer of health may give notice in writing to that effect to the occupier of the registered premises and to the person concerned requiring that, during a period to be specified in such notice, the person to whom the notice relates shall not milk cows or handle vessels used for containing milk or in any way take part in the production, distribution or storage of milk.
- (3) A person to whom any such notice relates and any other person who is suffering from an infectious disease or has recently been in contact with a person so suffering shall not milk cows or handle vessels used for containing milk or in any way take part in the production, distribution or storage of milk until the expiry of the period mentioned in the notice or, as the case may be, until all danger of the communication of infectious disease by means of the milk has ceased.
- (4) No cowkeeper or dairyman shall allow any person to whom any such notice relates, or any other person who is so suffering or has recently been in contact as aforesaid, to milk cows or handle vessels used for containing milk or in any way to take part in the production, distribution or storage of milk, until the expiry of the period mentioned in the notice or, as the case may be, until all danger of the communication of infectious disease by means of the milk has ceased.

The attention of local authorities was drawn to the provisions of the Milk and Dairies Order, 1926, relative to the prevention of infection, in a circular dealing with the precautions to be taken against the spread of alimentary infections^(w).

Where the medical officer of health considers it necessary for preventing the spread of enteric fever or dysentery, a local authority may by notice in writing prohibit any person from carrying on any occupation connected with the preparation or handling of milk for human consumption, until the authority issue a further notice in writing when they are satisfied that the risk of infection is removed. If the medical officer has grounds for suspecting that any person in the district who is employed in the milk trade is a carrier of enteric fever or dysentery infection, he must report the matter to the local authority, who may give notice in writing to the responsible manager of the business, certifying that it is necessary for the medical officer to make a medical examination of the suspected person. If, as a result of such an examination, the local authority are satisfied, on the report of the medical officer, that the person in question is a carrier, they may, by notice in writing, prohibit such person from carrying on employment in the milk trade for such period as may be specified in the notice^(x).

A *sanitary authority*^(y) is required to register, *inter alia*, persons carrying on the trade of a *retail* purveyor of milk, and where they are of opinion that the public health is, or is likely to be, endangered by any act or default of such a person, they may refuse to register or remove from the register such person in accordance with the provisions of section 22 of the Act of 1938 (see *ante*, p. 369).

The Public Health (Prevention of Tuberculosis) Regulations, 1925^(z), prohibit any person who knows he is suffering from tuberculosis of the respiratory tract from entering upon any employment or occupation in connection with a dairy which would involve the milking of cows, the treatment of milk or the handling of vessels used for containing milk. A local authority may, by notice, prohibit any person from continuing in any such employment as is mentioned above, upon a written report from the medical officer of health that such person is suffering from tuberculosis of the respiratory tract *and* is in an infectious condition. The notice must be in the prescribed form, state the date, not being less than

(w) Circular 2198, Ministry of Health, 25th November, 1940.

(x) Public Health (Infectious Disease) Regulations, 1927; S.R. and O., 1927, No. 1004, Sched. I, Part III.

(y) See Art. 3, Milk and Dairies Order, 1926; S.R. and O., 1926, No. 821.

(z) S.R. and O., 1925, No. 757.

seven days, on or before which the employment must be discontinued. If the person is aggrieved by the action of the local authority, he may appeal to a court of summary jurisdiction and must notify his intention to appeal to the clerk of the local authority, stating the grounds thereof. If the person concerned in any action taken under the Regulations is not himself in default, he is entitled to compensation for any damage he sustains, payable in accordance with the provisions of the Public Health Act, 1936(a).

The procedure detailed in the preceding paragraphs relative to the prevention of the spread of infectious disease through the agency of milk, is somewhat involved and in practice it is not often necessary to put it into operation. In the case of ordinary infectious diseases (excluding tuberculosis) it is usually sufficient if the infected person is immediately removed from all contact with the milk or milk vessels, and the latter thoroughly cleansed and sterilised. It may be necessary, in addition, to subject the milk to pasteurisation (see *post*, p. 430), before permitting it to be used for human consumption. In some cases the milk may be prohibited for use for human consumption, but the dairyman may be allowed to obtain supplies from an alternative and approved source. With regard to tuberculosis, it is only rarely that the power of stopping the milk supply is put into operation. As a general rule, when a sample of milk is found to contain living tubercle bacilli the particulars are forwarded to the medical officer of health of the county or county borough in whose area the cows are housed and arrangements made for the animals to be examined by a veterinary surgeon(b). If any cows are found to be definitely affected with tuberculosis *and* to come within the scope of the Tuberculosis Order, 1938(c), they are slaughtered at once, compensation being payable according to the extent of the disease(d). If no definite cases of tuberculosis are discovered but there are some suspected cases, they are usually isolated from the rest of the herd, the milk not being used for human consumption. During the period of isolation (which may be enforced legally up to a period of six weeks(e)), samples of milk should be examined bacteriologically in order to discover the cow or cows affected.

With regard to the liability of a dairyman in respect of the sale of milk containing pathogenic organisms, see *Square*

(a) Sect. 268; 29 Halsbury's Statutes 492; and see the author's "*Sanitary Administration*," Second Edition, 1944. London, Butterworth & Co., Ltd., p. 81.

(b) See Circular 1685, Ministry of Health, 22nd March, 1938, para. 11.

(c) S.R. and O., 1938, No. 165; and see *post*, p. 532.

(d) Where the disease is extensive, one-quarter of the valuation of the animal is paid; where the disease is not extensive, three-quarters.

(e) Art. 2, Tuberculosis Order, 1938; S.R. and O., 1938, No. 165.

v. *Model Farm Dairies (Bournemouth), Ltd.*(*f*). In this case milk containing typhoid organisms was supplied to a householder and all the inmates of the house, with the exception of the householder himself, contracted typhoid fever with consequent pecuniary loss to the householder. There was no negligence on the part of the dairyman, his employees or the person from whom he obtained the milk, the presence of the organisms could not have been known to any of these persons. It was held, however, that a contravention of section 2 of the Food and Drugs (Adulteration) Act, 1928(*g*) (see now section 3 of the Act of 1938, *ante*, p. 116) had occurred, the dairyman having sold to the prejudice of the purchaser an article of food not of the nature or substance or quality of the article demanded.

(*f*) [1938] 2 All E.R. 740.

(*g*) 8 Halsbury's Statutes 885.

CHAPTER 16.

DESIGNATED MILK.

INTRODUCTION.

After some preliminary attempts at the grading of milk according to prescribed standards of cleanliness carried out during the first World War, the Local Authorities (Milk) Order, 1921(*a*), was issued requiring the licensing of sellers of Grade A (Certified) Milk for which a bacteriological standard was prescribed, and Grade A Milk for which there was no such standard. In 1915 the Minister of Health was empowered to make an Order prescribing the conditions governing the production and distribution of Certified Milk(*b*), but the operation of the Act of 1915 was suspended owing to the war, and did not in fact become law until 1925(*c*). In the meanwhile the Milk and Dairies (Amendment) Act, 1922(*d*), was passed, and the Minister of Health was authorised to make an Order prescribing the conditions governing the production and distribution of graded milk(*e*). The Milk (Special Designations) Order, 1923(*f*), laid down the conditions governing the following grades of milk :—

- 1—Certified ;
- 2—Grade A (Tuberculin Tested) ;
- 3—Grade A ;
- 4—Grade A (Pasteurised) ; and
- 5—Pasteurised.

Largely as the result of the work of Wilson *et al*(*g*) the Order of 1923 was revoked and a new Order(*h*) (made in pursuance of powers conferred on the Minister of Health by section 10 of the Milk Act, 1934(*i*), which had replaced section 3 of the

(*a*) S.R. and O., 1921, No. 379.

(*b*) See Sect. 1, Milk and Dairies (Consolidation) Act, 1915; 8 Halsbury's Statutes 864.

(*c*) See Milk and Dairies (Consolidation) Act, 1915 (Commencement of Operation) Order, 1925; S.R. and O., 1925, No. 704.

(*d*) 8 Halsbury's Statutes 879.

(*e*) Sect. 3, Milk and Dairies (Amendment) Act, 1922; 8 Halsbury's Statutes 880.

(*f*) S.R. and O., 1923, No. 601.

(*g*) "The Bacteriological Grading of Milk," Medical Research Council, Special Report Series No. 206; G. S. Wilson *et al*, 1935, London, H.M.S.O.

(*h*) Milk (Special Designations) Order, 1936; S.R. and O., 1936, No. 356.

(*i*) 27 Halsbury's Statutes 16

Milk and Dairies (Amendment) Act, 1922) was issued, governing the following grades of milk :—

- 1—Tuberculin Tested ;
- 2—Tuberculin Tested (Certified) ;
- 3—Accredited ; and
- 4—Pasteurised.

The Order of 1936(*h*) is still in operation but was amended in 1938(*k*), 1941(*l*), 1942(*m*), 1943(*n*) and in 1946(*o*). So far as heat-treated milk is concerned the position has been altered as a result of a Defence Regulation(*p*) issued in 1944, requiring the compulsory heat treatment of raw milk retailed in certain specified areas. This new procedure—which has not yet been put into operation in the districts in question—does not, however, affect heat-treated milk which is specially designated “ Pasteurised ” milk. It is convenient however to deal with the subject of heat-treated milk generally in this chapter, and particulars of Defence Regulation 55G will be found on p. 441, *post*.

POWER TO MAKE REGULATIONS WITH RESPECT TO DESIGNATED MILK.

The various Regulations issued by the Minister of Health with respect to the production and sale of graded milk under special designations are contained in the Milk (Special Designations) Regulations, 1936 to 1946, to which reference has already been made. The power to make such Regulations is contained in section 20 of the Act of 1938 (see *ante*, p. 362) and the matters which can be dealt with in such Regulations are detailed in section 21 of the Act of 1938, *infra*.

Section 21, Food and Drugs Act, 1938.—Use of special designations in connection with milk.

- (1) Milk and Dairies Regulations may contain provisions for all or any of the purposes mentioned in any of the following paragraphs, that is to say—
 - (a) prescribing, in relation to milk of any description, such designation (hereinafter referred to as a “ special designation ”) as the Minister considers appropriate ;

(*h*) See footnote, p. 410.

(*k*) Milk (Special Designations) Amendment Order, 1938 ; S.R. and O., 1938, No. 218.

(*l*) Milk (Special Designations) Regulations, 1941 ; P.R. and O., 1941.

(*m*) Milk (Special Designations) Regulations, 1942 ; S.R. and O., 1942, No. 771.

(*n*) Milk (Special Designations) Regulations, 1943 ; S.R. and O., 1943, No. 1645.

(*o*) Milk (Special Designations) Regulations, 1946 ; S.R. and O., 1946, No. 10 ; and see *post*, p. 430.

(*p*) Regulation 55G, Defence (General) Regulations, 1939 ; S.R. and O., 1944, No. 65 ; and see *post*, p. 442.

- (b) providing, as respects any special designation, for the granting by the Minister, or by county councils or local authorities, of licences to producers and purveyors of milk authorising the use of that special designation ;
 - (c) prescribing the periods for which, and the conditions (including conditions as to the payment of fees) subject to which, licences, or licences of any particular class, are to be so granted ;
 - (d) providing for the suspension or revocation of a licence in the event of a breach of any condition subject to which it was granted ; and
 - (e) entitling any person aggrieved by a refusal, suspension or revocation of a licence by a county council or local authority to appeal to the Minister.
- (2) No person shall, for the purpose of the sale or advertisement of any milk—
- (a) use a special designation in any manner calculated to suggest that it refers to that milk, unless he holds a licence authorising the use of that designation in connection with that milk ; or
 - (b) refer to that milk by any such description, not being a special designation, as is calculated falsely to suggest—
 - (i) that there is in force a licence authorising the use of a special designation in connection with that milk ; or
 - (ii) that the milk is tested, approved or graded by any competent person ; or
 - (iii) that the cows from which the milk is derived are free from the infection of tuberculosis or of any other disease.
- (3) A person who contravenes any of the provisions of the last preceding subsection shall be guilty of an offence, and in any proceedings taken by virtue of paragraph (b) of that subsection it shall rest on the defendant to prove the truth of any suggestion which, in the opinion of the court, his acts or conduct, as proved by the prosecution, are or is calculated to convey.
- (4) It shall be the duty, in London, of Food and Drugs authorities and, elsewhere, of councils of counties and county boroughs, to enforce the provisions of subsection (2) of this section, except that in a county district it shall be the duty of the local authority to enforce them in the case of persons who are not producers of milk.

Milk (Special Designations) Regulations are subject to the provisions of section 92 of the Act of 1938(*q*) under which such Regulations may—

- (a) provide for the taking and examination of samples ;
- (b) apply, as respects matters to be dealt with by the Regulations, any provision in any Act (including this Act) dealing with the like matters, with the necessary modifications and adaptations ;
- (c) provide for an appeal to a court of summary jurisdiction against any refusal or other decision of an authority by whom the Regulations are to be enforced and executed ;
- (d) authorise the making of charges for the purpose of the Regulations or for any services performed thereunder, and provide for the recovery of charges so made ;

- (e) contain provisions for imposing on persons offending against the Regulations penalties not exceeding the maximum penalties specified in section seventy-nine of this Act ;
- (f) make such ancillary and incidental provisions as appear to the Minister to be necessary or desirable.

Before making the Regulations the Minister(*r*) must consult with such representative organisations as he thinks fit(*s*). The Regulations may specify the authorities, whether county councils, local authorities, food and drugs authorities or port health authorities, by whom they are to be enforced and executed, and they may provide for the giving of assistance and information by any authority concerned in the administration of the Regulations to any other authority so concerned, for the purposes of their respective duties thereunder(*t*). This requirement does not apply, however, in respect of the use of a special designation of raw milk by a producer of such milk(*u*), as under the Food and Drugs (Milk and Dairies) Act, 1944 (see *infra*) the Minister of Agriculture and Fisheries will be responsible for the supervision of the production of designated milk on farms, and no duties will fall to be carried out by county councils or local authorities.

Regulations *relating to raw milk* made in accordance with the provisions of section 20 of the Act of 1938 will, when the Food and Drugs (Milk and Dairies) Act, 1944(*v*), comes into operation(*w*), be made jointly by the Minister of Health and the Minister of Agriculture and Fisheries(*x*), and section 21 of the Act of 1938, *supra*, will be amended in accordance with section 2 of the Act of 1944, *infra*.

Section 2, Food and Drugs (Milk and Dairies) Act, 1944.—Amendment of section 21 of principal Act.

- (1) Regulations made under subsection (1) of section twenty-one of the principal Act (which relates to special designations in connection with milk) shall cease to be contained in Milk and Dairies Regulations, and shall be separate Regulations, which shall be called Milk (Special Designation) Regulations.
- (2) The power of making Milk (Special Designation) Regulations shall, in so far as the Regulations relate to raw milk, be exercised jointly by the Minister of Health and the Minister of Agriculture and Fisheries, instead of being exercised by the Minister of Health ; and accordingly any designation prescribed under paragraph (a) of the said subsection (1) in relation to raw milk of any description shall be such as those Ministers consider appropriate.

(*r*) Minister of Health—see sect. 8, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 257.

(*s*) *Ibid*, sect. 92(4) ; 31 Halsbury's Statutes 309.

(*t*) *Ibid*, sect. 92(3) ; 31 Halsbury's Statutes 309.

(*u*) Sect. 4(2), Food and Drugs (Milk and Dairies) Act, 1944 ; 37 Halsbury's Statutes 302.

(*v*) 37 Halsbury's Statutes 299.

(*w*) As a result of an Order made by the Minister of Health ; Food and Drugs (Milk and Dairies) Act, 1944 ; sect. 9(2) ; 37 Halsbury's Statutes 305.

(*x*) *Ibid*, sect. 1 ; 37 Halsbury's Statutes 300.

- (3) Regulations made under paragraph (b) of the said subsection (1) shall provide, as respects any special designation of raw milk, for the granting by the Minister of Agriculture and Fisheries, instead of by the Minister of Health or county councils or local authorities, of licences to producers of raw milk authorising the use of that special designation.

It will be observed that any new Regulations made jointly by the Ministers of Health and Agriculture will cease to be classified as Milk and Dairies Regulations made under section 20 of the Act of 1938, *supra*, and be known as Milk (Special Designation) Regulations. It should also be noted that the power to grant licences to *producers* of designated milk will be exercised by the Minister of Agriculture and Fisheries alone, and not by the Minister of Health, or by county and county borough councils as is the case under the Milk (Special Designations) Regulations, 1936 to 1946 (see *infra*).

GENERAL PROVISIONS WITH RESPECT TO DESIGNATED MILKS.

Authorities empowered to grant licences.—Subject to the provisions of the Regulations(y) the following are the authorities who may grant licences—

Producers' licences—

In London	..	..	City of London ; and Metropolitan Borough Councils.
Elsewhere	..	..	County Councils ; and County Borough Councils.

Other licences—

In London	..	..	City of London ; and Metropolitan Borough Councils.
Elsewhere	..	..	County Borough Councils ; Borough Councils ; Urban District Councils ; and Rural District Councils.

Any licence granted to a *local authority* will be issued by the Minister of Health himself(z). As mentioned above, when the Food and Drugs (Milk and Dairies) Act, 1944, comes into operation the power to grant *producers'* licences will be exercised by the Minister of Agriculture and Fisheries alone.

General provisions with respect to licences.—Applications for licences must be made in writing to the licensing authority(a). Special forms of application have not been

(y) The expression " Regulations " in this chapter refers to the Milk (Special Designations) Regulations, 1936 to 1946.

(z) Art. 4(1), Milk (Special Designations) Regulations, 1936 to 1946

(a) *Ibid*, Art. 6(1).

prescribed, but those shown in Appendix II of Memo. 197/Foods of the Ministry of Health, are suggested as suitable for ordinary cases(*b*). Where a person applies for a licence (otherwise than in renewal of an existing licence) in respect of an establishment other than that at which the milk is produced or in the case of a licence to use the designation "pasteurised," that at which the milk is pasteurised, he must state the name and address of the licensed dealer from whom he proposes to obtain his milk(*c*). Every applicant for a licence must satisfy the licensing authority that his arrangements for the production, storage, treatment and distribution of milk, as the case may be, are such as to comply with the conditions subject to which the licence may be granted(*d*).

Every licence issued under the Milk (Special Designation) Regulations must be in the form contained in the First Schedule to the Regulations of 1936, modified, if necessary, as the circumstances of individual cases may require(*e*). The forms of licence specified are as follows :—

Form A—Producer's licence authorising the use of the special designation "Tuberculin Tested," in respect of a farm at which the milk is or is not bottled ;

Form A—Modified for use in the case of a producer of "Accredited" milk ;

Form B—Dealer's licence authorising the use of the special designation "Tuberculin Tested" ;

Form B—Modified for use in the case of a dealer selling "Accredited" milk ;

Form B—Modified for use in the case of a dealer selling "Pasteurised" milk, not covered by a licence in Form C ;

Form C—Pasteuriser's licence authorising the use of the special designation "Pasteurised" ;

Form D—Supplementary licence authorising the use of the special designation "Tuberculin Tested" ;

Form D—Modified for use for supplementary licences for the use of the other special designations ; and

Form E—Pasteuriser's licence authorising the use of the special designation "Pasteurised."

The licensing authority may grant a licence to use the special designation "Pasteurised" in the Form C (for pasteurising plant of the "holder" type governed by the Milk (Special Designations) Order, 1936), or in the Form E (for pasteurising plant of the "high-temperature, short-time" type governed by the Milk (Special Designations) Regulations, 1941).

(*b*) Ministry of Health, Memo. 197/Foods, para. 8.

(*c*) Art. 6(2), Milk (Special Designations) Regulations, 1936 to 1946.

(*d*) *Ibid*, Art. 6(5).

(*e*) *Ibid*, Art. 5.

The general conditions subject to which licences may be granted are as follows :—

General Conditions subject to which Licences may be Granted.

- (1) The arrangements and processes under and by which the milk is produced, stored, treated and distributed, as the case may be, shall be such as to satisfy the licensing authority that the requirements of all Acts and Orders relating to Milk and Dairies and the conditions of this Order, subject to which the licence is granted, are being and will be complied with.
- (2) Adequate measures shall be taken to the satisfaction of the licensing authority to ensure that the milk to which the licence applies is kept apart from all other milk at all times except when it is in sealed containers. In particular any vessel or apparatus which has at any time been used for any other milk shall be thoroughly cleansed and sterilised on each occasion before it is used for the milk to which the licence applies and no room or compartment of a dairy shall be used at the same time for the milk to which the licence applies and any other milk unless either the former or the latter is in sealed containers.
- (3) Subject to the provisions of this Order the holder of the licence shall not for the purpose of the sale or advertisement of the milk to which the licence applies refer to it by any such designation (other than the special designation authorised by the licence) as is calculated to suggest that it is tested, approved or graded by any competent person.
- (4) The holder of the licence shall—
 - (a) keep accurate records of the quantities of the milk produced, purchased and sold, as the case may be, and of the names and addresses of the persons from whom the milk was purchased and to whom it was sold otherwise than by retail ;
 - (b) permit any person duly authorised by the licensing authority—
 - (i) to inspect the processes of production, storage and treatment,
 - (ii) to take samples of the milk free of charge, and
 - (iii) to inspect any records which the holder is required by the conditions of the licence to keep(f).

The Minister of Health is of opinion that in considering whether the general conditions laid down in Schedule Two, *supra*, will be satisfied, a licensing authority may properly take the requirements of the Milk and Dairies Order, 1926 (see *ante*, p. 366 *et seq*) as a minimum. It is for the authority to exercise their discretion in deciding whether further requirements may be necessary in order reasonably to ensure that the conditions of the licence will be regularly complied with. The Minister is advised that it is necessary for this purpose that there should be steam sterilisation of utensils and containers(g).

(f) *Ibid*, Second Sched.

(g) Circular 1533, para. 10, 24th April, 1936.

Every licence is in force for a period of one year or a part of a year ending on the 31st December in the year in respect of which it is granted^(h).

Except in the case of a licence granted by the Minister of Health, licences issued by licensing authorities must authorise the use of the special designation only in relation to milk sold at or from the establishment mentioned in the licence and (except in the case of milk sold by wholesale) only within the area of the licensing authority. Provided that a licence (other than a supplementary licence) in relation to milk sold at or from a pasteurising establishment applies also in relation to milk pasteurised at that establishment and sold by the holder of the licence at or from any other establishment in the same area⁽ⁱ⁾. A separate licence (and fee) is necessary for each shop within the area of a local authority, one licence will not cover a number of separate premises in the same district^(k). In the case of a person holding a licence authorising the use of a special designation in relation to milk sold by him at or from an establishment in one area, wishing to sell the milk by *retail* in another area the licensing authority in the second area may grant him a supplementary licence^(l) authorising him, during the period of operation of the first-mentioned licence, to use the special designation in relation to milk so sold in their area. The issue of a supplementary licence does not, however, authorise the licensing authority concerned to exercise any powers under the Regulations outside their area^(m).

Licence fees.—A licensing authority may charge fees at the following rates in respect of licences granted by them, or they may dispense with the payment of fees for all or for any class of licences, and where a licence is granted for a period of less than a year they may reduce the fee payable therefor to such sum as they may think fit, having regard to the length of the period⁽ⁿ⁾.

Fees payable for Licences.

For a Licence authorising the use of special designation "Tuberculin Tested" or "Accredited."

	£	s.	d.
Licence in respect of an establishment at which the milk is produced but not bottled	1	1	0
Licence in respect of an establishment at which the milk is produced and bottled	2	2	0

^(h) Art. 5(2), Milk (Special Designations) Regulations, 1936 to 1946.

⁽ⁱ⁾ *Ibid.*, Art. 4(2).

^(k) *United Dairies (London), Ltd. v. Hackney Borough Council* (1934), 98 J.P. 236; Digest Supp.

^(l) "Supplementary licence" means a licence authorising the use of a special designation in relation to milk sold by retail in an area other than that comprising the establishment from which it is sold; Art. 2(1), Milk (Special Designations) Regulations, 1936 to 1946.

^(m) *Ibid.*, Art. 4(3).

⁽ⁿ⁾ *Ibid.*, Art. 8.

Licence in respect of an establishment (not being the establishment at which the milk is produced) at which the milk is bottled	£	s.	d.
	2	2	0
Licence in respect of each shop or other establishment (not being the establishment at which the milk is produced or bottled) at or from which the milk is sold	0	5	0
Supplementary Licence with respect to milk sold from a shop or other establishment which is outside the area of the licensing authority	0	2	0

For a Licence authorising the use of the special designation " Pasteurised."

Licence in respect of the establishment in which the process of pasteurising is carried on and of any shop or other establishment in the area of the same licensing authority at or from which the milk is sold by the same dealer	1	1	0
Licence in respect of each shop or other establishment (not being an establishment covered by a licence under the last preceding item) at or from which the milk is sold	0	5	0
Supplementary Licence in relation to milk sold from a shop or other establishment which is outside the area of the licensing authority	0	2	0(o)

Wherever possible, it is desirable to dispense with the charging of fees as an encouragement to farmers and dairymen to sell graded milk, thereby securing a raising in the standard of milk retailed in the area. In some instances, however, it may be necessary to charge fees in order to cover the cost of the inspection and sampling service.

Transfer of designated milk from Scotland to England or Wales.—Where milk is brought from Scotland into England or Wales a licence granted in pursuance of an Order made by the Department of Health for Scotland and authorising the use of a special designation prescribed by the Scottish Milk (Special Designations) Order has effect as if it had been granted under the Order of 1936(*p*).

SPECIAL PROVISIONS WITH RESPECT TO DESIGNATED MILK.

" Tuberculin Tested " Milk.—Where a *producer* applies for a licence (otherwise than in renewal of an existing licence) to use the special designation " Tuberculin Tested " he must either satisfy the licensing authority that the herd in respect of which the licence is applied for is an *attested herd* (see *post*,

(o) *Ibid* (see note (l) on p. 417), Fourth Sched.

(p) *Ibid*, Art. 10(2).

p. 538) or that every animal in the herd at the date of the application has, not more than one month before the date of the application, been the subject of a tuberculin test made by an inspector or furnish the authority with a certificate of a tuberculin test of every animal in the herd at the date of the application made not more than one month before the date of such application. The producer must also satisfy the authority that every animal in the herd at the date of the application has, not more than one month before the date of such application, been the subject of an examination(*q*) made by an inspector, or furnish the authority with a veterinary surgeon's certificate of an examination of every animal in the herd at the date of the application made not more than one month before the date of the application. He must also satisfy the authority that any animal which has been certified as reacting to the tuberculin test has been removed from the herd and that any animal certified as showing evidence of any disease which is likely to affect the milk injuriously has been segregated from the rest of the herd or removed from the herd as the case may require(*r*).

A licence authorising a person to use the special designation "Tuberculin Tested" also entitles him to use the designation "Accredited" in relation to milk to which the licence applies(*s*).

The special conditions applicable to holders of licences to produce and/or sell "Tuberculin Tested" milk are contained in the Third Schedule to the Order of 1936, *infra*, as amended from time to time.

Part I.—(Tuberculin Tested).

A.—The following conditions apply to producers only :—

- 1—(a) Every animal of the herd shall be submitted to a tuberculin test at an interval of not less than two and not more than six months after the last preceding test of such animal, and an animal born and bred in the herd shall be submitted to such a test before it attains the age of twelve months. An inspector may make a special tuberculin test of any animal of the herd at an interval of not less than two months after the last preceding test of such animal, or, if the animal has not previously been submitted to a tuberculin test, at any time. No animal shall be added to the herd unless it has passed a tuberculin test within fourteen days before it is so added or, in the case of an animal taken directly from an

(*q*) An "examination" means a clinical examination of an animal either made by an inspector of the Ministry of Agriculture and Fisheries or made by a private veterinary surgeon in such manner as the Minister of Health may direct; *ibid*, art. 2(1).

(*r*) *Ibid*, art. 6(3); as amended by S.R. and O., 1938, No. 218.

(*s*) *Ibid*, art. 10(1).

attested herd or a herd in respect of which a licence authorising the use of the special designation "Tuberculin Tested" is in operation, on the occasion of the last test in that herd. Where an animal other than an animal taken from any such herd as aforesaid is added it shall be segregated from the rest of the herd for a period of two months from the date of its addition and submitted to a further tuberculin test on the expiration of that period :

Provided that in the case of an attested herd in lieu of the above conditions the conditions prescribed in the arrangements made in that behalf by the Minister of Agriculture and Fisheries shall be complied with.

- (b) The certificates of every tuberculin test made by a private veterinary surgeon shall be sent to the licensing authority within seven days after the completion of the test (or in the case of an animal added to the herd, within seven days after such addition).
 - (c) No animals in the herd shall be injected with tuberculin except on the occasion of the prescribed tuberculin tests. No such animal shall be inoculated or vaccinated against tuberculosis and no such animal shall be vaccinated with live *Brucella abortus* except with the approval of the Minister of Agriculture and Fisheries and with a vaccine approved by him(ss).
 - (d) Where any animal is certified as reacting to a tuberculin test it shall forthwith be removed from the herd.
 - (e) All animals in the herd shall be suitably marked for purposes of identification and a complete register of such animals shall be kept.
- 2—Every animal of the herd shall be submitted to an examination at intervals of not more than six months and in the case of an examination made by a private veterinary surgeon the veterinary surgeon's certificate thereof shall be sent to the licensing authority within seven days after the dates of such examinations.
- 3—Where an animal is certified as showing evidence of any disease which is likely to affect the milk injuriously it shall be segregated from the rest of the herd or removed from the herd as the case may require and the special designation shall not be used in relation to its milk.
- 4—A record shall be kept of all animals segregated from the rest of the herd or removed from the herd in pursuance of any of the foregoing conditions showing the reasons for the segregation or removal and, in the case of removal, the manner in which the animal has been disposed of.
- 5—The herd shall be completely isolated from all other cattle.

6—The milk in relation to which the special designation is used, unless it is bottled by the producer in accordance with the procedure for bottling hereinafter specified, shall be consigned from the dairy where it is produced in unventilated sealed containers which shall be labelled or marked in a suitable manner with the address of the dairy, the day of production (with the word "morning" or "evening" added according to the time of milking) and the words "Tuberculin Tested Milk."

B.—The following conditions apply to dealers (whether producers or not) by whom the milk is delivered to consumers :—

1—The milk in relation to which the special designation is used, unless it is delivered to the consumer in the containers in which it is received, the seals being unbroken, shall be delivered either in bottles or in other suitable containers of not less capacity than two gallons. For this purpose the term "bottle" includes any container of a capacity not exceeding one quart and of a type approved by the licensing authority granting the licence for the establishment at which the milk is bottled.

2—Every bottle containing the milk shall be tightly closed and shall be securely fastened either with a cap overlapping the lip of the bottle, or in some other suitable manner approved by the aforesaid licensing authority. The cap shall bear the address of the bottling establishment and the words "Tuberculin Tested Milk" and it may also bear (a) the day of production, with or without the word "morning" or "evening" according to the time of production, (b) the name of the dealer by whom the milk was bottled, (c) the words "Produced from cows which have passed the tuberculin test" and (d) if the milk has been bottled at the place of production, the words "(Certified)". Except with the consent of the aforesaid licensing authority the cap shall bear no other words.

If there is no cap on which the wording can suitably be placed, it shall be placed within a surrounding line in a prominent position elsewhere upon the container, and the foregoing provisions shall apply to the words within the surrounding line in the same way as they apply to the words on a cap.

3—Where containers other than bottles are used, every container shall be closed with a tightly fitting cover and shall be suitably sealed and labelled.

C.—The following conditions apply to all dealers (whether producers or not) :—

1—The milk in relation to which the special designation is used shall not at any stage be treated by heat or in any other manner likely to affect its nature or qualities, save that where a licence authorising the use of the designation "Pasteurised" in relation to such milk has been granted the milk may be treated in accordance with the conditions of such licence, and where it is so treated the word "(Pasteurised)" shall be added

after the words "Tuberculin Tested Milk" wherever such words are used in connection with the sale or advertisement of the milk or the labelling or marking of receptacles containing the milk. In the labelling or marking of receptacles the word "Pasteurised" shall be printed in block letters which shall not be smaller than the letters used for the words "Tuberculin Tested Milk".

2—Until the 31st day of December, 1936, the milk if not pasteurised shall be produced and treated under such conditions that on a sample being taken at any time before delivery to the consumer the milk shall be found to contain not more than 200,000 bacteria per millilitre and no coliform bacillus in one-hundredth of a millilitre. The tests shall be carried out in such manner as the Minister may direct.

3—(a) On and after the 1st day of January, 1937, the milk if not pasteurised shall be produced and treated under such conditions that

(i) any sample of milk in relation to which the special designation is used ; and

(ii) any sample of milk from the herd in respect of which a licence authorising the use of the special designation is in force (whether the designation is used in relation to that milk or not), if the sample is taken before the milk has been placed in bottles or other containers for delivery to the consumer and either while it is in the possession of the producer or before the containers in which it is consigned to another dealer are opened by that dealer

shall satisfy a methylene blue reduction test and shall be found to contain no coliform bacillus in one-hundredth of a millilitre. The tests shall be carried out in such manner as the Minister may direct :

Provided that before the test is begun any sample to which paragraph (ii) applies shall be kept at atmospheric temperature until 6 p.m. on the day of production if it is from morning milking and until 10 a.m. on the next day if it is from an afternoon milking and any other sample may be kept at atmospheric temperature for a period not exceeding two hours. If the test is not then immediately begun the milk shall be cooled and kept at a temperature from 32° to 40° Fahrenheit for a further period not exceeding 18 hours and the test shall be begun at the end of that period.

(b) A sample taken at any date from the 1st May to the 31st October shall be regarded as satisfying the methylene blue reduction test if it fails to decolourise the methylene blue in 4½ hours and a sample taken at any date from the 1st November to the 30th April shall be regarded as satisfying the test if it fails to decolourise the methylene blue in 5½ hours.

- 4(*t*)—(a) If the milk is pasteurised, any sample taken after pasteurisation and before delivery to the consumer shall satisfy a phosphatase test and a methylene blue test.
- (b) The phosphatase test shall be deemed to be satisfied by milk which gives a reading of 2·3 Lovibond blue units or less.
- (c) The methylene blue test shall be deemed to be satisfied by milk which fails to decolourise methylene blue in thirty minutes. The milk to be tested shall be kept at atmospheric shade temperature until it reaches the laboratory and shall there be kept at atmospheric shade temperature not exceeding 65° Fahrenheit until the test is begun. The test shall be begun not earlier than nine in the forenoon and not later than ten in the forenoon on the day after the sample has been taken.
- (d) The said tests shall be carried out in the manner described in Parts IV and V of this Schedule.

A “ tuberculin test ” means a tuberculin test of an animal either made by an inspector of the Ministry of Agriculture and Fisheries or made by a private veterinary surgeon with such tuberculin and in such manner as the Minister may direct(*u*). The method of carrying out the tuberculin test of animals must be in accordance with the double intradermal method, as described in the Memorandum by the Tuberculin Committee of the Medical Research Council entitled “ *Memorandum on the Method of carrying out the Double Intradermal Test in Cattle* ”(*v*). The form of certificate for the tuberculin test must be as set out in Appendix I to Memo. 197/Foods of the Ministry of Health(*w*), *infra*.

Milk (Special Designations) Order, 1936.

Tuberculin Tested Milk.

VETERINARY SURGEON'S CERTIFICATES OF

(1) Double Intradermal Tuberculin Test and

(2) Clinical Examination.

Address of Farm.....

Owner of Herd.....

Number of animals in herd	{	Milch cows	} Total
		Heifers	
		Bulls	
		Other animals	

(*t*) Amended by S.R. and O., 1946, No. 10.

(*u*) Art. 2(1), Milk (Special Designations) Regulations, 1936 to 1946.

(*v*) Published by H.M.S.O., price 3d.

(*w*) Issued by the Ministry of Health, 1936.

(1) DOUBLE INTRADERMAL TUBERCULIN TEST.

Date of commencement of test
Date of last previous test (if any).....
Brand and manufacturer of tuberculin used.....
Number of animals tested
Number of animals which passed the test.....
Number of animals which failed to pass the test.....

I HEREBY CERTIFY that the double intradermal test was applied to each of the above animals, that.....of the said animals passed the test, and that the results of the test were as indicated in the Schedule hereto.

Signature
Date

(2) CLINICAL EXAMINATION.

I have this day examined every animal in the above herd, and after submitting each animal separately to a clinical examination, I CERTIFY that no animal in the herd is affected with, or shows symptoms indicative of, any of the following pathological conditions :—

Tuberculosis of the udder, any induration of the udder likely to affect the milk, enlargement of supra-mammary lymphatic glands, tuberculosis in any form which can be recognised clinically, chronic cough with definite clinical symptoms of tuberculosis, anthrax, foot-and-mouth disease, mastitis, abscess of the udder, retained placenta, actinomycosis of the udder, suppuration of the udder, any comatose condition, any acute septicaemic condition, any septic condition of the uterus, or any infection of the udder or teats which is likely to convey disease ;

with the exception of*.....animals described in the Schedule hereto.

Signature
Address
.....
Date

* Insert number. If none, delete this line.

- Notes.—(1) Any departure from the technique usually adopted in applying the test should be indicated and the reasons for the departure should be given.
- (2) In describing any reaction or disturbance, abbreviations should be used where possible. An explanation of the abbreviations used should be appended to the foot of the Schedule.
- (3) All the particulars indicated in the Schedule must be given as to every animal subjected to the tuberculin test.

SCHEDULE.

Double Intradermal Tuberculin Test and Clinical Examination.

[illegible]

Abbreviations:

Note.—If the injections were not made in the neck, the site should be stated here. The caudal fold should never be used as the site of injections.

For a detailed study of the tuberculin test, reference should be made to the Special Report issued by the Medical Research Council in 1925(*x*). It should be noted that the tuberculin tests and clinical examinations of "Tuberculin Tested" herds are carried out by inspectors of the Ministry of Agriculture and Fisheries, unless the licensing authority agree to such work being done by a veterinary surgeon in private practice(*y*). Pre-licence tuberculin tests and clinical examinations are, however, the responsibility of the applicant, who must arrange for them to be carried out by a private veterinary surgeon, whose certificate must be sent to the licensing authority. Subsequent inspections and tests are carried out by the veterinary inspectors of the Ministry free of charge, their certificates being sent to the appropriate licensing authorities.

Where a person desires to sell "Tuberculin Tested" milk as Pasteurised, he must obtain a second licence authorising the use of the designation "Pasteurised" and the milk must be labelled "Tuberculin Tested Milk (Pasteurised)."

"Accredited" Milk.—Where a producer applies for a licence (otherwise than in renewal of an existing licence) to use the special designation "Accredited," he must satisfy the licensing authority that the milch cows in the herd at the date of application have, not more than one month before the date of application, been the subject of an examination(*z*) made by an inspector, or furnish the authority with a veterinary surgeon's certificate of such an examination. The form of certificate for the purpose, prescribed in Memo. 197/Foods of the Ministry of Health, is as follows :—

Milk (Special Designations) Order, 1936.

Accredited Milk

VETERINARY SURGEON'S CERTIFICATE OF CLINICAL EXAMINATION.

Address of farm

Owner of herd

Total number of milch cows in herd

I have this day examined all the animals described in the Schedule hereto being all the milch cows in the above herd and after submitting each animal separately to a clinical examination,

(*x*) "Tuberculin Tests in Cattle, with Special Reference to the Intradermal Test"; Medical Research Council, Special Report Series, No. 94, 1925, London, H.M.S.O.

(*y*) Art. 7(3), Milk (Special Designations) Regulations, 1936-1946.

(*z*) See note (*q*), *ante*, p. 419.

I CERTIFY that no animal is affected with or shows symptoms indicative of any of the following pathological conditions :—

Tuberculosis of the udder, any induration of the udder likely to affect the milk, enlargement of supra-mammary lymphatic glands, tuberculosis in any form which can be recognised clinically, chronic cough with definite clinical symptoms of tuberculosis, anthrax, foot-and-mouth disease, mastitis, abscess of the udder, retained placenta, actinomycosis of the udder, suppuration of the udder, any comatose condition, any acute septicaemic condition, any septic condition of the uterus, or any infection of the udder or teats which is likely to convey disease ;

with the exception of the* animals described in the Schedule hereto.

Signature

Address

.....

Date

SCHEDULE.

Description of animal.		Pathological Condition as specified in Certificate.	Degree. (Very Marked, Marked, Slight.)
Name.	Identification Number.		

GENERAL REMARKS.

* Here insert number. If none, delete this line.

The applicant must also satisfy the authority that any cow which has been certified as showing evidence of any disease which is likely to affect the milk injuriously has been segregated or removed from the herd as the case may require(a).

The special conditions applicable to holders of licences to produce and/or sell "Accredited" milk are contained in the Third Schedule to the Order of 1936, *infra*, as amended from time to time.

A.—The following conditions apply to producers only :—

- 1—Every milch cow shall be submitted to an examination at such times and as often as may be required by the Minister of Agriculture and Fisheries not being less often than once a year, and in the case of an examination made by a private veterinary surgeon the veterinary surgeon's certificate thereof shall be sent to the licensing authority within seven days after the date of such examination(b).
- 2—Where an animal is certified as showing evidence of any disease which is likely to affect the milk injuriously it shall be segregated from the rest of the herd or removed from the herd as the case may require and the special designation shall not be used in relation to its milk. A record shall be kept of all animals so segregated or removed showing the reasons for the segregation or removal, and in the case of removal, the manner in which the animal has been disposed of.
- 3—The herd shall not at any time contain any animal which to the knowledge of the producer had before its introduction into the herd been tested with tuberculin and had reacted to the test.
- 4—All milch cows belonging to the herd shall be suitably marked for purposes of identification and a complete register of such cows shall be kept.
- 5—The cows in milk belonging to the herd shall be kept separate from all other cows in milk.
- 6—The milk in relation to which the special designation is used unless it is bottled by the producer in accordance with the procedure for bottling hereinafter specified, shall be consigned from the dairy where it is produced in an unventilated sealed container which shall be labelled or marked in a suitable manner with the address of the dairy, the day of production (with the word "morning" or "evening" added according to the time of milking), and the words "Accredited milk."

B.—The following conditions apply to dealers (whether producers or not) by whom the milk is delivered to consumers :—

- 1—The milk in relation to which the special designation is used, unless it is delivered to the consumer in the containers in which it is received, the seals being unbroken, shall be delivered either in bottles or in other suitable containers of not less capacity than two gallons.

(a) Art. 6(4), Milk (Special Designations) Regulations, 1936 to 1946 ; as amended by S.R. and O., 1938, No. 218.

(b) Amended by S.R. and O., 1943, No. 1645.

For this purpose the term "bottle" includes any container of a capacity not exceeding one quart and of a type approved by the licensing authority granting the licence for the establishment at which the milk is bottled.

- 2—Every bottle containing the milk shall be tightly closed and shall be securely fastened either with a cap overlapping the lip of the bottle, or in some other suitable manner approved by the aforesaid licensing authority. The cap shall bear the address of the bottling establishment and the words "Accredited milk" and it may also bear (a) the day of production, with or without the word "morning" or "evening" according to the time of production, (b) the name of the dealer by whom the milk was bottled, and (c) if the milk has been bottled at the place of production, the words "Farm bottled." Except with the consent of the aforesaid licensing authority the cap shall bear no other words.

If there is no cap on which the wording can suitably be placed, it shall be placed within a surrounding line in a prominent position elsewhere upon the container, and the foregoing provisions shall apply to the words within the surrounding line in the same way as they apply to the words on a cap.

- 3—Where containers other than bottles are used, every container shall be closed with a tightly fitting cover and shall be suitably sealed and labelled.

C.—The following conditions apply to all dealers (whether producers or not) :—

- 1—The milk in relation to which the special designation is used shall not at any stage be treated by heat or in any other manner likely to affect its nature or qualities.

- 2—Until the 31st day of December, 1936, the milk shall be produced and treated under such conditions that on a sample being taken at any time before delivery to the consumer the milk shall be found to contain not more than 200,000 bacteria per millilitre and no coliform bacillus in one-hundredth of a millilitre. The tests shall be carried out in such manner as the Minister may direct.

- 3—(a) On and after the 1st day of January, 1937, the milk shall be produced and treated under such conditions that—

(i) any sample of milk in relation to which the special designation is used ; and

(ii) any sample of milk from the herd in respect of which a licence authorising the use of the special designation is in force (whether the designation is used in relation to that milk or not), if the sample is taken before the milk has been placed in bottles or other containers for delivery to the consumer and either while it is in the possession of the producer or before the containers in which it is consigned to another dealer are opened by that dealer

shall satisfy a methylene blue reduction test and shall be found to contain no coliform bacillus in one hundredth of a millilitre. The tests shall be carried out in such manner as the Minister may direct :

Provided that before the test is begun any sample to which paragraph (ii) applies shall be kept at atmospheric temperature until 6 p.m. on the day of production if it is from a morning milking and until 10 a.m. on the next day if it is from an afternoon milking and any other sample may be kept at atmospheric temperature for a period not exceeding two hours. If the test is not then immediately begun the milk shall be cooled and kept at a temperature from 32° to 40° Fahrenheit for a further period not exceeding 18 hours and the test shall be begun at the end of that period.

- (b) A sample taken at any date from the 1st May to the 31st October shall be regarded as satisfying the methylene blue reduction test if it fails to decolourise the methylene blue in 4½ hours, and a sample taken at any date from the 1st November to the 30th April shall be regarded as satisfying the test if it fails to decolourise the methylene blue in 5½ hours.

“ Pasteurised ” Milk.—A person who applies for a licence (otherwise than in renewal of an existing licence) to use the special designation “ pasteurised,” must indicate whether his application is for a licence to be granted the Form C or in the Form E (see *ante*, p. 415). Where the application is in respect of an establishment at which the milk is *not* pasteurised, the applicant must state the name and address of the licensed dealer from whom he proposes to obtain his pasteurised milk(c).

The special conditions applicable to holders of licences to pasteurise milk or retail it under the designation “ pasteurised ” are contained in Part III of the Third Schedule to the Order of 1936 (as amended(d)), *infra*.

Part III.—(Pasteurised).

- 1—The milk in relation to which the special designation is used shall be retained at a temperature of not less than 162° Fahrenheit for at least fifteen seconds and be immediately cooled to a temperature of not more than 55° Fahrenheit.
- 2—The milk shall not be so heated more than once and shall not be otherwise treated by heat.
- 3—Such indicating thermometers and recording thermometers as the licensing authority shall consider requisite shall be inserted in suitable places in the apparatus used for pasteurising during the whole of the pasteurising process, and the apparatus shall be thermostatically controlled and be provided with a device which shall automatically divert the flow of milk which has not been retained at a temperature of not less than 162° Fahrenheit for at least fifteen seconds. The type of apparatus and thermometers used and the methods employed shall be such as are satisfactory to the licensing authority.
- 4—Temperature records shall be made and all such records shall be preserved for a period of not less than one month.

(c) Art. 6(2), Milk (Special Designations) Regulations, 1936–1946.

(d) Milk (Special Designations) Regulations, 1941; P.R. and O., 1941; and S.R. and O., 1946, No. 10.

- 5—After the milk has left the receptacles in which the pasteurising process is carried out it shall not be placed in any apparatus or storage vessels which are at any time used for milk which has not been pasteurised.
- 6—Every vessel in which the milk is transported or is exposed or offered for sale shall bear a suitable label with the words "Pasteurised milk."
- 7—(1) Any sample of the milk taken after pasteurisation and before delivery to the consumer shall satisfy a phosphatase test and a methylene blue test.
 - (2) The phosphatase test shall be deemed to be satisfied by milk which gives a reading of 2·3 Lovibond blue units or less.
 - (3) The methylene blue test shall be deemed to be satisfied by milk which fails to decolourise methylene blue in thirty minutes. The milk to be tested shall be kept at atmospheric shade temperature until it reaches the laboratory and shall there be kept at atmospheric shade temperature not exceeding 65° Fahrenheit until the test is begun. The test shall be begun not earlier than nine in the forenoon and not later than ten in the forenoon on the day after the sample has been taken.
 - (4) The said tests shall be carried out in the manner described in Parts IV and V of this Schedule(*dd*).

The technique for carrying out the phosphatase and methylene blue tests is the same as that laid down for heat-treated milk (see *post*, p. 441)(*e*).

It should be noted that the Provisional Regulations made in 1941 enable a local authority to licence a pasteurising plant operating on the high temperature short-time (H.T.S.T.) principle, as an alternative to the "holder" process prescribed in the Milk (Special Designations) Order, 1936(*f*). There are thus two approved methods of pasteurising milk, in respect of which licences to sell the milk under the designation "pasteurised" may be granted, *viz.* :—

- 1—The "holder" process, involving heating the milk to a temperature of between 145–150 degrees Fahrenheit for at least thirty minutes and immediately cooling to a temperature not exceeding 55 degrees Fahrenheit ; and
- 2—The "H.T.S.T." process, involving heating the milk to a temperature of not less than 162 degrees Fahrenheit for at least fifteen seconds and immediately cooling to a temperature not exceeding 55 degrees Fahrenheit.

Before licences to sell pasteurised milk are granted, great care should be taken to ensure that the plant concerned complies with the requirements of the Regulations set out above

(*dd*) The technique is the same as for heat-treated milk—see *post*, p. 446.

(*e*) Milk (Special Designations) Regulations, 1946 ; S.R. and O., 1946, No. 10 ; and Ministry of Health Circular 10/46, 18th January, 1946.

(*f*) See Ministry of Health Circular 2423, July 1941.

and that samples of the heated milk satisfy the bacteriological standard and also the phosphatase test(*g*). In order to do so, a series of samples should be taken and submitted for bacteriological examination. So far as the plant is concerned, advice may be obtained by the licensing authority from the National Institute for Research in Dairying, Shinfield, near Reading(*h*). Reference should also be made to Report No 77, Public Health and Medical Subjects, issued by the Ministry of Health in 1935(*i*).

RELATION OF ROUTINE RESAZURIN AND METHYLENE BLUE TESTS FOR DESIGNATED MILK.

Some confusion has occurred in relation to the routine resazurin test (see *ante*, p. 97) used for ascertaining the keeping quality of milk under the National Milk Testing and Advisory Scheme and the methylene blue test for designated milks. The following information was issued by the Ministry of Agriculture and Fisheries in 1945, in the form of a leaflet(*k*).

Ministry of Agriculture and Fisheries.

NATIONAL MILK TESTING AND ADVISORY SCHEME.

Relation of the Routine Resazurin Test under the Scheme to the Methylene Blue Test used for Designated Milks.

INTRODUCTION.

Comparisons have been made between results of the routine resazurin test and those of the methylene blue test, and apparent discrepancies between the two sets of results have led to some confusion and misgiving amongst those not familiar with the technical points involved.

These two tests are essentially similar and depend on the capacity of bacteria in milk to bleach certain colour dyes.

The Milk (Special Designations) Order, 1936, requires that T.T. and Accredited milk, sold raw, should satisfy a methylene blue test after a period of storage. During the months of May to October inclusive, the milk must not decolourise methylene blue in 4½ hours; during the months of November to April inclusive, methylene blue must not be decolourised in 5½ hours.

(*g*) For particulars of the phosphatase test, see *Journal Dairy Research*, vol. VI, No. 2, p. 191; and see *ante*, p. 89.

(*h*) See also "*High Temperature Short-Time Pasteurisation*," some annotations on the Milk (Special Designations) Regulations, 1941; N.I.R.D. Publication No. 658; Mattick & Hiscox, October, 1941; National Institute for Research in Dairying, Shinfield, near Reading.

(*i*) "*The Supervision of Milk Pasteurising Plant*," by Sir Weldon Dalrymple-Champneys, Bt., Ministry of Health Reports on Public Health and Medical Subjects No. 77; H.M.S.O., 1935.

(*k*) Form No. B580/TPY, March, 1945.

Under the National Milk Testing and Advisory Scheme the milk is examined by a resazurin test. This is also a colour test but the colour change in the case of resazurin is continuous, and it is possible to compare the colour of the sample after any agreed incubation time against a standard set of colour discs. These are numbered 6 to 0, disc 6 being the initial colour, and disc 0 representing complete decolourisation. Time is therefore saved because a result may be obtained in many cases in a shorter time than would be required for complete decolourisation.

Instead of winter and summer standards, a day by day adjustment is made based on the mean atmospheric temperature, and is achieved by altering the incubation time. At present the incubation times vary from fifteen minutes, when the mean is over 60° Fahrenheit, to two hours, when the mean is 40° Fahrenheit or lower.

The results are classified as follows :—

Category " A " (disc-reading 4 to 6)—Satisfactory keeping quality.

Category " B " (disc-reading 1 to 3½)—Doubtful keeping quality.

Category " C " (disc-reading ½ or 0)—Poor keeping quality.

Standard techniques are published for both tests : Ministry of Health, Memo. 139/Foods ; Ministry of Agriculture, C.158/T.P.Y.

OBJECT OF TESTS.

The two techniques are designed for different purposes.

- (a) The National Milk Testing and Advisory Scheme is primarily concerned with the improvement of the general keeping quality of milk and the results of the routine resazurin test classification are used, not to differentiate among the higher qualities of milk, but principally to direct assistance and advice to those farms where it is most needed.
- (b) The Milk (Special Designations) Order defines certain high quality milks, for which a higher price is paid to the producer. The results of the methylene blue test are used to ensure that samples do not fall below a certain standard.

Briefly, the results of the resazurin test are being used at present primarily as a basis for farm advisory work, whereas the results of the methylene blue test are being used to fix a datum below which high quality must not fall.

COMPARISON OF RESULTS.

In view of the above it might be expected that no samples which satisfied the methylene blue standard would show results other than in Category " A " by the routine resazurin test, and conversely that samples classified in Category " B " or " C " by the resazurin test would not pass the methylene blue test.

Results prove that in the main this is so, but it does not follow that exact agreement will occur in all cases. In fact *a true comparison is not possible in individual cases.*

There are important differences in respect of the times and conditions of storage of samples prior to testing, and differences in the method of compensating for changes in atmospheric temperature. These, and the other chief points of difference, are discussed below, and summarised in a table at the end of this note.

1. Atmospheric temperature.

Designated milk is submitted to the methylene blue test which requires the sample to be incubated in a water bath at a temperature of between 37° and 38° Centigrade for 5½ hours during the winter months from November to April, and for 4½ hours from May to October.

The routine resazurin test, to which the milk is submitted under the National Milk Testing and Advisory Scheme, requires that the period of incubation in the water bath, at 37° to 38° Centigrade, shall be determined by the mean atmospheric temperature of the previous twenty-four hours. The incubation period varies from fifteen minutes when the mean atmospheric temperature is over 60° Fahrenheit to two hours when the mean atmospheric temperature is 40° Fahrenheit and under.

Apart from day to day differences, it is clear that there may be extreme differences due to compensation for temperature both in very hot and in very cold weather, when samples tested under the methylene blue test continue to be subject to only normal "summer" or "winter" standards. Designated milk samples are thus subject to a "Calendar" or "Seasonal" compensation scale and the N.M.T.A.S. samples to a daily "Atmospheric Temperature" compensation scale.

Consequently the results of the two tests are not strictly comparable, even if obtained on the same milk.

2. Age at testing.

There is an essential difference in the age and conditions of storage of the samples before examination by the two tests, and this has a considerable effect on the interpretation of the results obtained. In the methylene blue test the sample is aged by storage at atmospheric shade temperature for 12 or 18 hours according to whether it is morning or evening milk, whereas in the resazurin test the sample is kept at atmospheric shade temperature for 24 or 28 hours.

3. Different days of sampling.

It almost invariably happens that results are compared on samples taken on different days, thus failing to take into account variations in production efficiency, apart from changes in atmospheric temperature conditions. There may be marked differences in keeping quality even between successive milkings, and results for samples of milk produced on different days, or even from the different meals on the same day, may not necessarily agree.

4. Frequency of sampling.

Under the National Milk Testing and Advisory Scheme samples are examined by the resazurin test twice monthly, whereas designated milks in many areas are submitted to the methylene blue test less frequently. If, therefore, there is variation in production efficiency there is greater likelihood that the occasional failure will be shown up by the more frequent testing of the National Milk Testing and Advisory Scheme.

5. Point of sampling.

Designated milk samples may be taken on the farm at the time of production. National Milk Testing and Advisory Scheme samples are normally taken at the point of first delivery, thus involving the hazards of farm storage and transit to the creamery. Where designated milks which pass the methylene blue test frequently fail the resazurin test under the National Milk

Testing and Advisory Scheme, there is clearly a case for further investigation of the production methods. Close co-operation between the officers concerned in the sampling and testing of milk under the Milk (Special Designations) Order, and the National Milk Testing and Advisory Scheme, will facilitate investigations into cases of this kind.

Summary of Differences.

	Graded milk examined in accordance with the Milk (Special Designations) Order.	Milk examined under the National Milk Testing and Advisory Scheme.
	<i>Methylene Blue Test.</i>	<i>Resazurin Test.</i>
1. Main object of testing.	Maintenance of a prescribed standard.	Elimination of milk of poor keeping quality.
2. Point of sampling.	At any point between production and delivery to consumer but usually at farm.	Normally on arrival at creamery or dairy.
3. Storage before testing.	Approximately 12-18 hours.	Approximately 24 hours.
4. Allowance for variations in atmospheric shade temperature.	Seasonal adjustment of incubation period for summer and winter.	Adjustment of incubation period according to variation in the mean atmospheric temperature.

REFUSAL, SUSPENSION OR REVOCATION OF A LICENCE TO USE A SPECIAL DESIGNATION.

If they are satisfied that there has been a breach of the conditions subject to which a licence to produce or sell designated milk was granted, a local authority may suspend or revoke the licence in accordance with the provisions of Article 9 of the Milk (Special Designations) Order, 1936, *infra*.

Article 9, Milk (Special Designations) Order, 1936.

- 9—(1) A licensing authority may, if they are satisfied that there has been a breach of any of the conditions subject to which a licence was granted, suspend or revoke the licence, but the licence shall not be suspended or revoked before the licensing authority have served on the holder a notice stating the grounds on which it is proposed to suspend or revoke the licence and the holder has been afforded a reasonable opportunity of making representations to the authority in regard thereto :

Provided that a producer's licence shall not be suspended or revoked by reason only of his milk being found not to comply with the conditions of the licence after it has left his custody and control if he shows to the satisfaction of the licensing authority that such non-compliance was not due to any act or default of himself or of his servants or agents.

- (2) Where a licensing authority decide to refuse or to suspend or revoke a licence they shall serve notice of the decision on the applicant or the holder of the licence as the case may be and, except where the licensing authority is the Minister, that person may within seven days after receipt of the notice appeal to the Minister, whose decision shall be final, and the licensing authority shall comply with the decision of the Minister. In any appeal any reference in this Order to anything being done to the satisfaction of the licensing authority shall be treated as if the reference were to the satisfaction of the Minister.
- (3) A decision to suspend or revoke a licence shall not have effect until seven days have elapsed since the receipt of notice thereof, and in case of an appeal against the decision the licence shall remain in force until the end of the year in respect of which it was granted or until the determination of the appeal, whichever is the earlier.
- (4) Where during the period of operation of a licence, other than a licence in respect of which a notice of suspension or revocation has been given and has not been appealed against, the holder applies for a new licence in renewal thereof and tenders the prescribed fee, and the licensing authority refuse to grant such new licence the existing licence shall remain in force for seven days after notice of such refusal is given and, if an appeal is made against such refusal, until the determination of the appeal :

Provided that an appeal against the decision to suspend or revoke a licence shall be deemed for the purposes of this Article to include an appeal against any refusal of the licensing authority to renew such licence if the renewal is refused before the determination of the appeal.

It should be noted that *before* suspending or revoking the licence the local authority *must* serve on the holder of the licence a notice stating the grounds on which it is proposed to suspend or revoke the licence. The following is a form of report suitable for the purpose, which could constitute the grounds on which it is proposed to suspend or revoke a licence. The notice served on the licence-holder should be accompanied by a copy of the report of the sanitary inspector on the lines indicated below.

Milk (Special Designations) Regulations, 1936-1942.

On 27th January, 1944, a licence to retail Tuberculin Tested (Certified) Milk in the City of — during the period ending on 31st December, 1944, was granted to Mr. —.

The above Regulations provide that at any time before delivery to the consumer the milk must conform to the following standard:—

- (1) A sample of the milk taken at any date from the 1st May to the 31st October must not decolourise methylene blue in $4\frac{1}{2}$ hours, and a sample taken at any date from the 1st November to the 30th April must not decolourise methylene blue in $5\frac{1}{2}$ hours ; and
- (2) the milk must not contain coliform organisms in 1/100th of a millilitre.

Since the licence was granted the following samples of milk have been examined with the results shown :—

Date.	Number of samples.	Methylene blue test satisfactory.	Coliform test satisfactory.	Standard complied with.
1944				
6 Jan.	6	Yes	No	No
10 "	17	No	No	No
18 "	32	Yes	Yes	Yes
26 "	39	No	Yes	No
3 Feb.	58	No	Yes	No
7 "	70	No	No	No
15 "	73	Yes	No	No
23 "	93	Yes	Yes	Yes
2 Mar.	100	Yes	Yes	Yes
6 "	113	No	No	No
14 "	129	Yes	Yes	Yes
22 "	146	Yes	Yes	Yes
30 "	157	Yes	Yes	Yes
5 April	166	Yes	No	No
11 "	177	No	Yes	No
19 "	190	Yes	No	No
27 "	208	Yes	Yes	Yes
1 May	212	No	No	No
8 "	225	Yes	Yes	Yes
17 "	231	No	No	No
25 "	247	No	No	No
5 June	255	Yes	No	No
22 "	290	Yes	Yes	Yes
26 "	304	Yes	Yes	Yes
4 July	314	Yes	No	No
12 "	334	No	Yes	No
20 "	349	Yes	Yes	Yes
24 "	370	No	No	No
1 Aug.	386	No	No	No
9 "	399	Yes	No	No
17 "	411	No	Yes	No
21 "	430	No	No	No
29 "	447	No	No	No
6 Sept.	456	Yes	Yes	Yes
14 "	479	Yes	Yes	Yes
18 "	489	Yes	Yes	Yes
26 "	517	No	Yes	No
4 Oct.	533	Yes	Yes	Yes

It will be seen that of the 38 samples examined, 15 complied with the standard laid down in the Regulations and 23 failed to comply with that standard.

Article 9 of the Regulations enables the City Council, as the licensing authority, if they are satisfied that there has been a breach of any of the conditions subject to which a licence was granted, to suspend or revoke the licence, provided that the

holder of the licence has been served with a notice stating the grounds on which it is proposed to suspend or revoke the licence and he has been afforded a reasonable opportunity of making representations to the authority in regard thereto.

In view of the unsatisfactory samples obtained since the licence was granted, I recommend that it be revoked and due notice of such revocation served on Mr. —.

“ X,”

Chief Sanitary Inspector.

The holder of the licence is entitled to appear before the local authority^(l) when the question of suspending or revoking the licence is being considered. On such an occasion the local authority (committee or sub-committee acting under delegated powers) must act in a quasi-judicial capacity, the proceedings being in the nature of an appeal by the licence-holder against the proposal of the local authority to suspend or revoke his licence. Accordingly it is desirable that the clerk of the authority should act as clerk to the members of the authority considering the matter, the sanitary inspector being in the nature of the prosecutor and the licence-holder the defendant. The sanitary inspector and the licence-holder should enter and leave the council chamber or committee room together, nothing being said by the one in the absence of the other. In view of the fact that the licence-holder is entitled to appeal to the Minister of Health against the decision of the local authority to suspend or revoke his licence, it is desirable that a shorthand report of the proceedings should be taken. In the event of an appeal to the Minister it is usual for the local authority to be asked to provide a full report of the whole of the proceedings taken by the authority, which led to the suspension, revocation or refusal of the licence, copies of all relevant documents accompanying the report.

After a licence has been suspended or revoked and any appeal to the Minister decided in favour of the local authority, it is competent for the licence-holder to apply for a removal of the suspension or for a new licence, as the case may be, on the ground that the conditions governing the granting of a licence are now being complied with. In most cases the suspension or revocation of a licence occurs because the milk fails to pass the prescribed bacteriological tests. In such instances it will be necessary for the authority to be satisfied that the milk complies with such tests and for this purpose a

(l) It is desirable that a matter of this kind should be dealt with by a committee or sub-committee, and in order to enable this to be done, the powers of the local authority should be delegated to the committee, and, if necessary, from the committee to the sub-committee (see sect. 85, Local Government Act, 1933, and sect. 273, Public Health Act, 1936; 26, 29 Halsbury's Statutes 352, 498; and see *ante*, p. 29).

series of samples should be taken over a sufficiently long period of time to enable a true estimate of the condition of the milk to be obtained. The following series of sample results cover a period (January to October 1944) when a licence to bottle and retail "Tuberculin Tested" milk was in force, the licence being revoked in October 1944; a period (November and December 1944) when there was no licence in force; and, finally, a period (January to March 1945) when a new licence was in force.

(a) Period of operation of licence to bottle and retail
"Tuberculin Tested" Milk—January to October, 1944.

Date.	Number of sample.	Methylene blue test satisfactory.	Coliform test satisfactory.	Complied with.
1944				
6 Jan.	5	Yes	Yes	Yes
14 "	18	Yes	Yes	Yes
18 "	33	Yes	No	No
26 "	40	No	Yes	No
3 Feb.	57	Yes	No	No
7 "	69	Yes	Yes	Yes
23 "	92	Yes	Yes	Yes
2 Mar.	99	Yes	Yes	Yes
6 "	112	Yes	Yes	Yes
14 "	130	Yes	Yes	Yes
22 "	147	Yes	Yes	Yes
30 "	158	Yes	Yes	Yes
3 April	167	Yes	Yes	Yes
11 "	178	Yes	No	No
19 "	189	Yes	No	No
27 "	207	Yes	Yes	Yes
1 May	211	Yes	Yes	Yes
8 "	220	Yes	Yes	Yes
17 "	230	Yes	Yes	Yes
25 "	246	Yes	No	No
5 June	256	Yes	No	No
22 "	289	Yes	Yes	Yes
26 "	300	Yes	No	No
4 July	313	No	No	No
20 "	348	No	No	No
24 "	369	No	No	No
1 Aug.	384	No	No	No
9 "	398	No	No	No
17 "	410	No	No	No
21 "	429	Yes	No	No
29 "	446	No	No	No
6 Sept.	455	No	No	No
14 "	478	Yes	Yes	Yes
25 "	516	No	Yes	No
4 Oct.	532	Yes	Yes	Yes

(b) Period when licence was revoked—October to December, 1944.

Date.	Number of sample.	Methylene blue test satisfactory.	Coliform test satisfactory.	Complied with.
1944				
9 Nov.	616	Yes	Yes	Yes
12 "	635	Yes	Yes	Yes
16 "	643	Yes	Yes	Yes
21 "	649	Yes	Yes	Yes
29 "	674	Yes	Not done	Yes
3 Dec.	696	Yes	Yes	Yes
11 "	711	Yes	Yes	Yes
19 "	726	Yes	Yes	Yes
28 "	746	Yes	Yes	Yes

(c) Period after the granting of a new licence on 1st January, 1945, to bottle and retail "Tuberculin Tested" Milk—January to April 1945.

Date.	Number of sample.	Methylene blue test satisfactory.	Coliform test satisfactory.	Complied with.
1945				
4 Jan.	6	Yes	Yes	Yes
8 "	30	Yes	Yes	Yes
16 "	45	Yes	Yes	Yes
24 "	65	Yes	Yes	Yes
1 Feb.	85	Yes	Yes	Yes
8 "	108	Yes	Yes	Yes
13 "	123	Yes	Yes	Yes
21 "	142	Yes	Yes	Yes
1 Mar.	171	Yes	Yes	Yes
5 "	176	Yes	Yes	Yes
13 "	192	Yes	Yes	Yes
20 "	205	Yes	Yes	Yes
27 "	248	Yes	Yes	Yes
2 April	259	Yes	Yes	Yes

There is no rule governing the suspension or revocation of licences because the milk fails to satisfy the prescribed bacteriological tests. It is for the local authority concerned, having regard to all the circumstances, to decide when the number of failures is sufficient to justify such action. Some authorities make a practice of issuing a preliminary warning after three consecutive unsatisfactory samples, followed by action in accordance with Article 9 of the Order of 1936 (see *ante*, p. 435), if a further three bad results are obtained. There

may, however, be exceptional circumstances arising in individual cases which would justify a local authority delaying action to suspend or revoke a licence and they have complete discretion in the matter to deal with cases where there is a failure to comply with the licence conditions as they think fit. It is obviously desirable, however, that as far as practicable each local authority should adopt a uniform method of dealing with the suspension or revocation of licences authorising the production or sale of designated milk.

Although the preceding paragraphs have referred to cases where existing licences are revoked or suspended, the procedure is the same where a local authority decide to issue a licence in the first instance. Notice of intention to refuse the issue of a licence, together with the reason for their decision, must be given to the applicant, who has a similar right to appear before the authority, as in the case of the suspension or revocation of an existing licence, to state his case.

Action under section 3 of the Act of 1938.—Where designated milk fails to comply with the bacteriological standard laid down for the grade of milk in question it may be possible to take action in accordance with section 3 of the Act of 1938 (see *ante*, p. 116) in respect of milk which is not of the nature, substance or quality demanded. In such circumstances it is necessary for the procedure with regard to formal samples of milk (see *ante*, p. 55) to be carefully complied with, including the division of the sample into three parts. It is unlikely, however, that it will be practicable to apply this procedure to designated milk other than "pasteurised" milk. In the latter instance failure to comply with the phosphatase test has been followed by successful police court proceedings.

HEAT-TREATED MILK.

In the White Paper⁽ⁿ⁾ on "*Measures to Improve the Quality of the Nation's Milk Supply*" the Government stated that it was proposed to exercise closer control over the quality of milk as it reaches the consumer. The Minister of Food will be empowered by Regulation to make it an offence to sell milk by retail in any area which he may schedule unless either—

- i—it is heat-treated as defined by Order ; or
- ii—it is lawfully sold as Tuberculin Tested milk ; or
- iii—it is Accredited milk sold by a retailer (whether producer-retailer or dairyman) who sells milk of a single accredited herd.

(n) Cmd. 6454, July, 1943 ; and see *ante*, p. 361.

Milk will be regarded as heat-treated if it satisfied the phosphatase test for adequate heat treatment, supplemented by a methylene blue test for keeping quality, as prescribed by the Minister of Health. It is the Government's intention to apply these measures of control to all areas where schemes for the rationalisation of retail distribution were introduced as a war-time emergency measure(*o*) as soon as the necessary plant can be made available. The various War-Time Dairymen's Associations have been asked to formulate schemes for the heat treatment of milk, to be submitted to the Minister of Food.

In accordance with the policy laid down in the White Paper(*n*), Defence (General) Regulation No. 55G, was made by the Minister of Food on the 20th January, 1944, as follows:—

Defence (General) Regulations, 1939—Regulation 55G(*p*), Restriction on sale of raw milk.

55G—(1) Except with the consent of the Minister, no person shall, within any area specified in that behalf in an order of the Minister (hereafter in this Regulation referred to as a "specified area"), sell any milk by retail unless either—

- (a) it is sold as Tuberculin Tested milk and is so sold without contravention of the enactments relating to special designations or the conditions of any licence issued thereunder; or
- (b) it is sold as Accredited milk and is so sold without any such contravention as aforesaid and all the milk so sold by that person is derived from one herd; or
- (c) it is sold as heat-treated milk, pasteurised milk or sterilised milk and is so sold without any contravention of the subsequent provisions of this Regulation, and, in the case of milk sold as pasteurised milk, is also so sold without any contravention of the enactments relating to special designations or the conditions of any licence issued thereunder:

Provided that the Minister shall not specify any area as aforesaid unless he is satisfied that arrangements approved by him or on his behalf for economising the use of men and vehicles in the retail distribution of milk are in force in that area and that those arrangements have the effect of restricting consumers in their choice of the persons by or through whom they can obtain milk.

- (2) Except with the consent of the Minister, no person shall, in the course of his business, supply any milk free of cost within a specified area unless the milk supplied could be lawfully sold by him by retail within that area without the consent of the Minister.

(*n*) See footnote, p. 441.

(*o*) See Cmd. 6362, May 1942; and see *ante*, p. 360.

(*p*) S.R. and O., 1944, No. 65.

- (3) No person shall, in connection with the sale, or the supply free of cost in the course of his business, of milk within a specified area, use the description "heat-treated milk," the description "pasteurised milk" or the description "sterilised milk" or any other description so closely resembling any of those descriptions as to be calculated to deceive unless—
- (a) the milk has been so treated by heat and otherwise, and is in such condition, as to satisfy the prescribed tests; and
 - (b) the said treatment has been applied by a person authorised in that behalf by the Minister:

Provided that, in the case of the descriptions "heat-treated milk" and "sterilised milk" or any description so closely resembling either of those descriptions as to be calculated to deceive, this paragraph shall have effect in relation to milk sold or supplied outside a specified area as it has effect in relation to milk sold or supplied within a specified area.

- (4) Except with the consent of the Minister, no person shall within a specified area sell by retail, or, in the course of his business, supply free of cost, any milk in a closed container unless either—
- (a) the milk is being sold or, in the case of milk supplied free of cost, could be sold by the person supplying it, as Tuberculin Tested milk or Accredited milk without contravention of the enactments relating to special designations or the conditions of any licence issued thereunder; or
 - (b) the container bears thereon the words "heat-treated" or the word "pasteurised" or the word "sterilised."
- (5) The preceding provisions of this Regulation relating to the sale or supply of milk within a specified area shall apply also to any sale or supply of milk outside a specified area at or from an establishment at or from which milk is sold by retail or supplied free of cost within a specified area.
- (6) Nothing in paragraph (1) or paragraph (2) of this Regulation shall apply to the resale by a person of milk which has been lawfully sold to him in a specified area, if the resale takes place in the course of a business or a part of a business which consists of the sale of refreshments.
- (7) No person shall have any milk in his possession with intent that it shall be sold or supplied free of cost in contravention of any of the provisions of this Regulation.
- (8) Nothing in the preceding provisions of this Regulation shall be construed as authorising the use by any person of any description in relation to milk which he could not lawfully have used in relation to that milk if this Regulation had not come into operation.
- (9) It shall be the duty of Food and Drugs authorities (as defined in section sixty-four of the Food and Drugs Act, 1938) to enforce, as respects their respective areas, the provisions of this Regulation, and any expenses incurred by them in so doing shall be defrayed in like manner as their expenses in enforcing the said Act:

Provided that nothing in this paragraph shall be construed as restricting the power of the Minister to take such steps as he may think fit to secure the enforcement of this Regulation or any power of any person who would, apart from this paragraph, have power to institute proceedings for offences against this Regulation, to institute such proceedings.

- (10) For the purpose of securing the enforcement of this Regulation, any sampling officer within the meaning of section sixty-eight of the Food and Drugs Act, 1938, may, on production of some duly authenticated document showing his authority under that Act—

- (a) enter and inspect any premises used or appropriated for the purposes of any business or part of a business which consists of or includes the sale of milk by retail ;
- (b) inspect any articles found on any such premises ;
- (c) take samples, for examination or testing, of any milk found on any such premises or in the possession of a person engaged in delivering milk in the course of any such business or part of a business as aforesaid.

- (11) Any milk which is delivered in pursuance of a contract of sale shall, for the purposes of this Regulation, be taken to be sold at the place and at the time at which it is so delivered.

- (12) In this Regulation, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

“ enactments relating to special designations ” means section three of the Milk and Dairies (Amendment) Act, 1922 (as amended by section ten of the Milk Act, 1934), any order made thereunder, section twenty-one of the Food and Drugs Act, 1938, and the provisions of any Milk and Dairies Regulations made by virtue of the said section twenty-one ;

“ free of cost ” means, in relation to the supply of milk, free of cost to the person to whom it is supplied ;

“ herd ” means a herd as defined for the purposes of the Milk (Special Designations) Order, 1936 ;

“ milk ” means liquid cows’ milk (including separated milk and skimmed milk) but does not include condensed milk or evaporated milk ;

“ the Minister ” means the Minister of Food ;

“ prescribed ” means prescribed by order of the Minister of Health ;

“ sell by retail ” means, in relation to milk, sell the milk otherwise than by wholesale, and “ sell by wholesale ” means, in relation to milk, sell the milk either—

- (a) to a person who buys it to sell it again or supply it free of cost in the course of his business or to sell something made from it or of which it is an ingredient ; or
- (b) to a person who buys it for the purpose of feeding it to livestock :

Provided that a sale of milk to a person who buys it to sell it again, or to sell something made from it or of which it is an ingredient, shall be deemed to be a sale by retail if the resale of the milk or, as the case may be, the sale of the thing made therefrom or of which it is an ingredient is to be effected in the course of a business or a part of a business which consists of the sale of refreshments.

(13) This Regulation shall, in its application to Scotland, have effect subject to the following modifications :—

- (a) for any reference to the Minister of Health there shall be substituted a reference to the Secretary of State, for any reference to section sixty-eight of the Food and Drugs Act, 1938, there shall be substituted a reference to section sixteen of the Food and Drugs (Adulteration) Act, 1928, and for any reference to the Milk (Special Designations) Order, 1936, there shall be substituted a reference to the Milk (Special Designations) Order (Scotland), 1936 ;
- (b) for any reference to Tuberculin Tested milk there shall be substituted a reference to Certified milk or Tuberculin Tested milk and for any reference to Accredited milk there shall be substituted a reference to Standard milk ;
- (c) for paragraph (9) the following paragraph shall be substituted :—

“ (9) It shall be the duty of the local authorities for the purpose of the Milk and Dairies (Amendment) Act, 1922, to enforce, within their respective areas, the provisions of this Regulation, and any expense thereby incurred shall be defrayed out of the public health general assessment :

Provided that nothing in this paragraph shall be construed as authorising any local authority to institute proceedings for a contravention of this Regulation.”

(14) This Regulation shall not extend to Northern Ireland.

2—(1) In the Third Schedule to the said Regulations (which relates to the manner in which proceedings may be instituted in respect of offences against certain provisions of the Regulations) immediately before the entry relating to Regulation sixty AC there shall be inserted the following entry :—

“ Regulation 55G—By or on behalf of the Minister of Food, and by or on behalf of a Food and Drugs authority (as defined in section sixty-four of the Food and Drugs Act, 1938).”

(2) In the said Third Schedule, in the entry relating to Regulations in Part IV which specifically entrust functions to a Secretary of State or other Minister or to the Admiralty or Board of Trade after the words “ Board of Trade,” in the first column, there shall be inserted the words “ other than Regulation 55G.”

It will be observed that in a *specified area* milk may not be sold by retail or supplied free of cost unless it is :—

- i—"Tuberculin Tested" milk lawfully sold as such ; or
- ii—"Accredited" milk lawfully sold as such and provided that all such milk sold by the dairyman is derived from one herd ; or
- iii—Heat-treated milk, pasteurised milk or sterilised milk.

This restriction does not apply—

- i—to milk sold to a dairyman for the purpose of resale, but the milk when resold to consumers by the purchasing dairyman must comply with the requirements of the Regulation ; or
- ii—to milk sold for use in manufacturing any other product ; or
- iii—to milk sold for the purpose of feeding to livestock.

It must also be noted that all milk sold to caterers and restaurant proprietors in a specified area must comply with the requirements of the Regulation, but the requirements do not apply to the milk when sold by them as a refreshment or part of a meal.

Prescribed tests.—The tests for heat-treated milk have been prescribed by the Minister of Health in the Heat-Treated Milk (Prescribed Tests) Order, 1944(*q*), as follows :—

- 2—The tests to be satisfied as aforesaid shall be a phosphatase test and a methylene blue test which shall respectively be carried out in the manner following :—
 - (a) The phosphatase test shall be carried out in accordance with Part I of the schedule hereto. Such test shall be deemed to be satisfied by milk giving a reading of 2·3 Lovibond blue units or less.
 - (b) The methylene blue test shall be carried out in accordance with Part II of the said schedule. Such test shall be deemed to be satisfied by milk which fails to decolourise methylene blue in thirty minutes. The milk to be tested shall be kept at atmospheric shade temperature until it reaches the laboratory and shall there be kept at atmospheric shade temperature not exceeding 65° Fahrenheit until the test is begun. The test shall be begun not earlier than nine in the forenoon and not later than ten in the forenoon on the day after the sample has been taken.

SCHEDULE.

PART I—THE PHOSPHATASE TEST.

REAGENTS.

Buffer-substrate : Buffer-substrate solution must be prepared at the strength of 1·09 gm. of disodium phenyl phosphate and 11·54 gm. of sodium diethyl barbiturate in 1 litre of distilled water saturated with chloroform. Alternatively, buffer-substrate tablets may be used to make up a solution of the same strength and a few drops of chloroform added. The solutions must be kept in a cool, dark place and must not be kept longer than 3 days.

Test reagent : Add 1 volume of Folin and Ciocalteu's reagent to 2 volumes of a 5 per cent. solution of sodium hexametaphosphate.

METHOD OF CARRYING OUT THE TEST.

To 10 ml. of the buffer-substrate solution contained in a test-tube, add 0.5 ml. of well-mixed milk. Add 3 drops of chloroform, stopper the tube, mix the contents and incubate at $37 \pm 1^\circ \text{C}$. for 24 ± 2 hours. At the end of this time, cool, add 4.5 ml. of the test reagent, mix, allow to stand for 3 to 5 minutes and filter into a test-tube marked at 10 ml. To 10 ml. of the filtrate, add 2 ml. of a 14 per cent. solution of pure anhydrous sodium carbonate, mix and place the test-tube for exactly 2 minutes in boiling water (kept boiling). Cool, and read the colour, using a comparator or a tintometer.

Control Tests.

Keep the remainder of all milk samples in the refrigerator. *After completing the test* carry out control tests on those samples which have given a positive phosphatase reaction.

Mix thoroughly to 10 ml. of the buffer-substrate solution with 4.5 ml. of the test reagent, add 0.5 ml. of milk and mix. Allow to stand for 3 to 5 minutes, and filter into a test-tube marked at 10 ml. To 10 ml. of the filtrate, add 2 ml. of the sodium carbonate solution, mix and place the tube for exactly 2 minutes in a boiling-water bath (kept boiling). Cool, and read the colour developed. The colour must not exceed 1.5 Lovibond blue units.

Precautions.

- (a) Phenols, disinfectants containing phenols and soap containing carbolic acid must be kept at a safe distance from the test reagents and apparatus ;
- (b) the use of bottle caps made from phenolic resins must be avoided ;
- (c) new rubber stoppers must be tested for phenolic impurities before use ;
- (d) all glassware must be clean ;
- (e) contamination of pipettes by saliva must be avoided ;
- (f) a fresh pipette must be used for each sample of milk ;
- (g) all reagents must be kept in a cool, dark place and well protected from dust ;
- (h) tests must not be carried out in direct sunlight ;
- (i) freshly boiled distilled water must be used throughout ;
- (j) samples which show a taint or clot on boiling must not be tested.

TEST OF REAGENTS.

The purity of the reagents must be tested by performing a blank test without milk, with each batch of samples tested. The colour must not exceed 0.5 Lovibond blue units.

PART II—THE METHYLENE BLUE TEST.

SAMPLING.

Except where a sample consists of an unopened bottle or carton, the milk to be sampled must be well mixed and the sample must be collected with aseptic precautions in a sterile bottle.

REAGENTS AND APPARATUS.

- (a) *Methylene Blue*.—Tablets manufactured under arrangements made by the Minister of Health must be used. Add one tablet to 200 ml. of cold sterile glass-distilled water in a sterile flask and shake until the tablet is completely dissolved. After the tablet has dissolved make up the solution to 800 ml. with cold sterile glass-distilled water and store in a stoppered flask in a cool, dark place. The solution must be stored in the dark and not kept for longer than 2 months. When in use it must at no time be exposed to sunlight.
- (b) *Test-Tubes*.—Test-tubes conforming to the British Standard Specification 152/16, nominal $6'' \times \frac{5}{8}''$, having an internal diameter of 13.5 ± 0.5 mm. and an etched mark indicating 10 ml. must be used. Test-tubes must be plugged with cotton-wool, covered with closely fitting aluminium caps, or otherwise stored so as to avoid contamination.

- (c) *Rubber Stoppers*.—These must be sterilised before use.
- (d) *Pipettes*.—1 ml. straight-sided blow-out delivery pipettes must be used for measuring the methylene blue solution. The pipettes must be plugged with cotton-wool at the upper end, and be sterilised.

METHOD OF CARRYING OUT THE TEST.

Thoroughly mix the sample of milk by inverting and shaking the sample bottle and pour the milk into a sterile test-tube up to the 10 ml. mark, leaving one side of the interior unwetted with milk. Add 1 ml. of methylene blue solution without letting the pipette come into contact with the milk in the tube or with the wetted side of the interior of the tube. After the lapse of 3 seconds, blow out the solution remaining in the tip of the pipette. Close the tube with a sterile rubber stopper with aseptic precautions. Invert the tube slowly twice, so that the whole column of contained air rises above the level of the milk, and place within 5 minutes in a water bath. The water in the bath must be kept above the level of the milk in the test-tubes, and its temperature, which must be between 37° C. and 38° C., must be maintained as nearly uniform as possible by means of a reliable automatic thermo-regulator. The interior of the bath must be kept completely dark.

To show when decolourisation is complete a control tube must be used with each bath for comparison with the experimental tubes. The control tube is prepared by immersing in boiling water for 3 minutes a stoppered test-tube containing 10 ml. of mixed milk from a number of samples + 1 ml. of tap-water. The milk used for the control tubes must be approximately of the same fat-content and colour as that being tested.

The milk is to be regarded as decolourised when the whole column of milk is completely decolourised or is completely decolourised up to within 5 mm. of the surface. A trace of colour at the bottom of the tube which does not extend upwards for more than 5 mm. may be ignored.

Precautions.

The methylene blue solution when not in use must be kept in the dark; it must at no time be exposed to direct sunlight.

The amount of methylene blue required for a day's work must be poured off from the stock bottle into a suitable glass container. The pipette used for transferring the methylene blue solution to the tubes of milk must not be introduced into the stock bottle.

Enforcement of Regulation 55G.—Paragraph (9) of Regulation 55G provides that the Regulation shall be enforced by food and drugs authorities (see *ante*, p. 19) as regards their respective areas. The Minister of Food will notify the food and drugs authority of the intention to issue an Order applying the Regulation to their area and where the food and drugs authority is not the authority responsible for granting licences under the Milk (Special Designations) Regulations, notice will also be given to the appropriate authority(r).

In every local government district where the local authority is *not* the food and drugs authority there will be two authorities responsible for the supervision and control of heat-treated milk. As is pointed out above, paragraph 9 of the Regulation places the duty of enforcing the provisions thereof on food and drugs authorities but the powers of county district councils who are not food and drugs authorities with respect to the

(r) Explanatory Memorandum, Ministry of Food, February 1944, para. 10.

issue of licences to pasteurise milk are not affected. Consequently, in county districts where the local authorities are not responsible for the enforcement of the food and drugs provisions, the *county council* will be responsible for the enforcement of the provisions of Regulation 55G relating to heat-treated milk *except* "pasteurised" milk, whilst the district councils will remain responsible for the enforcement of the provisions of the Milk (Special Designations) Regulations, with respect to licensed pasteurisation plants. It is essential, therefore, that there should be the closest co-operation between the two authorities in order to co-ordinate the work of sampling and supervision of all heat-treated milk and heat-treatment plants.

Sampling of heat-treated milk.—The Ministry of Health recommend that heat-treated milk from each dairyman should be sampled for examination by the *phosphatase test* as a matter of routine not less frequently than twice a month, and where unsatisfactory results occur, further samples should be taken at more frequent intervals, even daily, so that the authority may be in a position to satisfy itself that the Regulation is being complied with. The precautions recommended in the Addendum to Memorandum 139/Foods respecting the phosphatase test (see *ante*, p. 89) should be carefully observed. So far as the *methylene blue test* is concerned, samples should be taken as often as may be necessary, having regard to such circumstances as the record of the particular dairy, the season of the year and the time taken in transport(s). As to sampling of milk generally, see *ante*, pp. 81 *et seq.*

Reporting of unsatisfactory sample results.—The Ministry of Food require local authorities to notify their Area Milk Officer of the name and address of any dairyman whose sample is unsatisfactory and the test or tests it failed to pass. Particulars of the Area Milk Officers are as follows :—

MINISTRY OF FOOD

Area Milk Officers.

Food Division.	Address.	Telephone No.	Telegraphic Address.
EASTERN I AND EASTERN II	Area Milk Officer, Ministry of Food, Corpus Christi College, " H " Block, Cambridge	Cambridge 55274-5	Qualmilk Cambridge
SOUTH- EASTERN	Area Milk Officer, Ministry of Food, 18 Molyneux Park Road, Tunbridge Wells, Kent	Tunbridge Wells 3348 Ext. 13	Qualmilk Tunbridge Wells

(s) Ministry of Health Circular 31/44, 3rd April, 1944.

Area Milk Officers—(continued).

Food Division.	Address.	Telephone No.	Telegraphic Address.
LONDON			
NORTHERN	Area Milk Officer, Ministry of Food, 2 Eslington Terrace, Jesmond, Newcastle-on-Tyne	Jesmond 55	Qualmilk Newcastle- on-Tyne
NORTH- EASTERN	Area Milk Officer, Ministry of Food, City of Leeds School, Woodhouse Lane, Leeds 2	Leeds 31473-4-5 Ext. 39	Qualmilk Leeds
NORTH MIDLAND	Area Milk Officer, Ministry of Food, " Linden House," Clumber Road West, Nottingham	Nottingham 46321 Ext. 53	Qualmilk Nottingham
NORTH- WESTERN AND NORTH WALES	Area Milk Officer, Ministry of Food, Bridgewater House, Whitworth Street, Manchester 1	Manchester Central 3251	
MIDLAND	Area Milk Officer, Ministry of Food, 5 Lower Temple Street, Birmingham	Central 7431 Ext. 40	Qualmilk Birmingham
SOUTH WALES	Area Milk Officer, Ministry of Food, 50/52 Cathedral Road, Cardiff	Cardiff 8740	Qualmilk Cardiff
SOUTHERN	Area Milk Officer, Ministry of Food, 45 Minster Street, Reading, Berks.	Reading 60442	Qualmilk Reading
SOUTH- WESTERN	Area Milk Officer, Ministry of Food, 34 Tyndalls Park Road, Bristol 8	Bristol 37071	Qualmilk Bristol

A monthly return, on Form L.M. 107 (supplied by the Ministry) must be sent to the Ministry of Food, Milk Division (Quality Branch), Thames Ditton, Surrey, showing the total number of samples examined during the month, with the results of such examination(*t*).

Power of entry.—It should be noted that paragraph 10 of Regulation 55G gives power to a sampling officer (see *ante*, p. 51) of the food and drugs authority to enter and inspect any

(*t*) Explanatory Memorandum, Ministry of Food, February 1944, para. 24.

premises used for the sale of milk by retail, to inspect any articles therein, *e.g.* bottles, utensils or vessels used in the handling of milk and to take samples of milk for testing purposes.

Authorisation of heat-treatment plants.—Milk may only be heat-treated, pasteurised or sterilised for the purpose of the Regulation in plants, the owners of which hold an authority from the Minister of Food to operate it. Normally the Minister will issue such authorisation in respect of pasteurising plants for which a licence is held from the local authority under the Milk (Special Designations) Regulations, without further investigation, which will be operative so long as the licence of the authority is in force. Other plant will be authorised when the Minister of Food is satisfied that the milk passes the prescribed tests of the Minister of Health (see *ante*, p. 446). Before issuing such an authority the Minister of Food will require samples to be examined and he expects the co-operation of food and drugs authorities for this purpose. Where samples are persistently unsatisfactory the authority to operate the plant will be withdrawn by the Minister of Food and the owner required to purchase heat-treated milk from another processor^(u).

The form of authorisation has been prescribed by the Minister of Food as follows^(v) :—

Ministry of Food.

Defence (General) Regulations, 1939.

AUTHORITY TO OPERATE MILK HEAT-TREATMENT PLANT.

Pursuant to paragraph (3) of Regulation 55G of the Defence (General) Regulations, 1939, the Minister of Food hereby authorises.....of
to apply treatment by heat and otherwise to milk by means of a.....plant of a capacity of.....gallons per hour installed at.....subject to the following condition :—

No material alteration or addition shall during the currency of this authority be made to the said plant except with a written consent given by or on behalf of the Minister of Food.

This authority is not transferable and may be revoked at any time without reason assigned.

.....
For and on behalf of the Minister of Food.

Dated.....day of.....194..

(u) *Ibid*, paras. 20–23.

(v) Appendix 1, Circular C7, QM. 7063, Ministry of Food, 1st March, 1945

PART V.

FOOD PREMISES.

CHAPTER 17.

BAKEHOUSES.

Definition of bakehouse.—A bakehouse is defined as—

“any place in which bread, biscuits or confectionery is or are baked by way of trade or for purposes of gain” (a).

Enforcement of provisions relating to bakehouses.—Section 157 of the Factories Act, 1937(b), provided that sections 97 to 100 of the Act of 1901, which were repealed by the Act of 1937, should have effect, with the necessary modifications, as set out in Part I of the Third Schedule to the Act of 1937, and be enforced by district councils. By the Ministry of Health (Factories and Workshops Transfer of Powers) Order, 1921(c), the powers and duties of the Secretary of State, so far as they are related to the supervision and enforcement of the provisions of sections 97, 98, 99 and 100 of the Factory and Workshops Act, 1901, were transferred to the Minister of Health and dealt with by local sanitary authorities. The Act of 1937 maintained this position but the Food and Drugs Act, 1938, repealed the provisions of the Act of 1937(d) so that there are now no special provisions relative to bakehouses (except basement bakehouses, as to which see *post*, p. 455).

A bakehouse is a factory within the meaning of the Factories Act, 1937(e), and is subject to the general provisions of that Act relating to factories(f).

Provisions relating to rooms used for preparing food.—The general provisions of the Food and Drugs Act, 1938, relating to rooms where food is prepared or stored, contained in section 13 (see *ante*, p. 313), apply in the case of bakehouses. This section requires every room used for the preparation of food for sale to comply with the following requirements:—

- (a) no sanitary convenience, dustbin or ashpit shall be within, or communicate directly with, the room, or be so placed that offensive odours therefrom can penetrate into the room;
- (b) no cistern for the supply of water to the room shall be in direct communication with, or discharge directly into, a sanitary convenience, and there shall not be within the room any outlet for the ventilation of a drain, or, except with the approval

(a) Sect. 152, Factories Act, 1937; 30 Halsbury's Statutes 298.

(b) 30 Halsbury's Statutes 301. (c) S.R. and O., 1921, No. 958

(d) Sect. 101 and Fourth Sched., Food and Drugs Act, 1938; 31 Halsbury's Statutes 316, 319.

(e) 30 Halsbury's Statutes 201.

(f) See the author's "Sanitary Administration," Second Edition, 1944. London, Butterworth & Co., Ltd., pp. 312 *et seq.*

of the local authority, an inlet into any drain conveying sewage or foul water ;

- (c) the walls, ceiling, floor, windows and doors of the room shall be kept in a proper state of repair ;
- (d) the walls, ceiling and doors of the room shall be painted, white-washed, cleansed, or purified as often as may be necessary to keep them clean, and the windows of the room shall be kept clean ;
- (e) the room shall not be used as a sleeping-place, and, so far as may be necessary to prevent risk of infection or contamination of food in the room, no sleeping-place adjoining the room shall communicate therewith except through the open air, or through an intervening ventilated space ;
- (f) except in the case of an artificially refrigerated room, suitable and sufficient means of ventilation shall be provided and suitable and sufficient ventilation shall be maintained ;
- (g) no refuse or filth, whether solid or liquid, shall be deposited or allowed to accumulate in the room, except so far as may be necessary for the proper carrying on of the trade or business for which the room is used, and the floor of the room shall be cleansed as often as may be necessary to keep it clean ;
- (h) cleanliness shall be observed by persons employed in the room, both in regard to the room and all articles, apparatus and utensils therein, and in regard to themselves and their clothing ; and
- (i) there shall be provided in, or within reasonable distance of, the room suitable washing basins and a sufficient supply of soap, clean towels and clean water, both hot and cold, for the use of persons employed in the room.

In so far as the requirements of paragraphs (a), (b), (c) or (f), *supra*, are of a structural character, the owner of the bakehouse is responsible if he let the premises as a bakehouse, or, if not having so let it, he permits it to be used as a bakehouse after receiving notice from the local authority(g).

Overcrowding in bakehouses.—Bakehouses are subject to the provisions of section 2, Factories Act, 1937, *infra*, relative to overcrowding.

Section 2, Factories Act, 1937.—Overcrowding.

- (1) A factory shall not, while work is carried on, be so overcrowded as to cause risk of injury to the health of the persons employed therein.
- (2) Without prejudice to the generality of the foregoing provisions, a factory shall be deemed to be so overcrowded as aforesaid, if the number of persons employed at a time in any workroom is such that the amount of cubic space allowed for every person employed in the room is less than four hundred cubic feet :

Provided that, if the chief inspector is satisfied that owing to the special conditions under which the work is carried on in any workroom in which explosive materials are manufactured or handled, the application of this subsection to that workroom would be inappropriate or unnecessary, he may by certificate except the workroom from those provisions subject to any conditions specified in the certificate.

(g) Sect. 13(3), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 262 ; and see *ante*, p. 315.

- (3) As respects any room used as a workroom at the date of the passing of this Act, the last foregoing subsection shall, for the period of five years after that date, and, if before the expiration of that period effective and suitable mechanical ventilation has been provided in the room, for a further period of five years, have effect as if for the reference therein to four hundred cubic feet there were substituted a reference to two hundred and fifty cubic feet :

Provided that this subsection shall cease to apply to the room—

- (a) if the room passes into the occupation of any person other than the person who was the occupier thereof at the passing of this Act, or his successor in the same business ; or
 - (b) if, during the first of the said periods, the inspector for the district requires the provision of effective and suitable mechanical ventilation in the room and default is made in complying with the requirement ; or
 - (c) if, during the second of the said periods or in a case where it has been provided in pursuance of the inspector's requirement during either of those periods, the effective and suitable mechanical ventilation provided in the room ceases to be maintained.
- (4) The Secretary of State may make regulations as respects any class or description of factory or parts thereof or any process, increasing the number of cubic feet which must under this section be allowed for every person employed in a workroom.
- (5) In calculating, for the purpose of this section, the amount of cubic space in any room, no space more than fourteen feet from the floor shall be taken into account, and, where a room contains a gallery, the gallery shall be treated for the purposes of this section as if it were partitioned off from the remainder of the room and formed a separate room.
- (6) Unless the inspector for the district otherwise allows, there shall be posted in the workroom a notice specifying the number of persons who, having regard to the provisions of this section, may be employed in that room.

It will be observed that although subsection (2) requires a minimum of 400 cubic feet per person in a factory, rooms in use as workrooms on 31st July, 1937, which remained in the occupation of the same person or his successor in the same business for a period of five years (*i.e.* until 31st July, 1942), needed to provide only 250 cubic feet per person, unless the inspector of factories had required the provision of mechanical ventilation and it has not been installed, when the minimum of 400 cubic feet was necessary. If, before the 31st July, 1942, effective and suitable mechanical ventilation was provided for a workroom, the minimum of 250 cubic feet per person may be continued for a further period of five years. The minimum of 400 cubic feet per person will be operative in all factories on the 31st July, 1947.

Although no Regulations(*h*) have yet been made, as provided by subsection (4) of section 2, *supra*, section 159 of the

(*h*) Power to make Regulations is contained in sect. 129, Factories Act, 1937 ; 30 Halsbury's Statutes 288.

Act of 1937(*i*) continues in force Regulations and Orders made under repealed statutes. Accordingly, the following are still in operation :—

- | | | |
|--|---------|--|
| (a) Bakehouse underground(<i>k</i>) | .. .. . | 500 cubic feet. |
| (b) Bakehouses where work is carried on at night by means of artificial light other than electricity(<i>k</i>) | | 400 cubic feet during the period from 9 p.m. to 6 a.m. |

In calculating the amount of cubic space available in bakehouses, it should be remembered that space over fourteen feet must be excluded. This provision appeared for the first time in the Act of 1937 and is in accordance with modern conceptions as to ventilation. It should be noted that whereas under the repealed Act of 1901 the notice specifying the number of persons permitted to work in a factory was recorded in the Abstract of the Act, it is now necessary to place a notice, in the prescribed form(*l*) in each bakehouse showing the number of workers permitted to be employed therein.

Basement bakehouses.—A “ basement bakehouse ” is defined by subsection (4) of section 54 of the Factories Act, 1937, as follows :—

“ For the purpose of this section ‘ basement bakehouse ’ means a bakehouse any baking-room of which is so situate that the surface of the floor is more than three feet below the surface of the footway of the adjoining street or of the ground adjoining or nearest to the room ; and ‘ baking-room ’ means any room used for baking, or for any process incidental thereto.”

There is no indication as to what is meant by the term “ adjoining ” in the above definition. In regard to underground rooms in dwelling-houses the depth is to be measured in relation to ground within nine feet of the room, but so far as bakehouses are concerned, no distance is specified. There seems to be no reason, however, why a similar distance should not be used.

Section 54 of the Act of 1937, *infra*, prohibits the use of basement bakehouses unless they were so used on the 30th July, 1937, and a certificate of suitability had been issued by the district council in accordance with the provisions of subsection (2) of section 101 of the Factory and Workshop Act, 1901(*m*). From the 1st January, 1904—the date when the provisions of section 101, *supra*, came into operation—it was illegal to use *any* premises as a basement bakehouse unless—

- 1—the premises were so used prior to the passage of the Act of 1901 ; and
- 2—the premises had been certified by the district council to be suitable for the purpose(*n*).

(*i*) 30 Halsbury's Statutes 302.

(*k*) Order dated 30/9/03 ; S.R. and O., 1903, No. 1157.

(*l*) Notice No. 46.

(*m*) 8 Halsbury's Statutes 568.

(*n*) *Evans v. Gallon & Son* (1904), 68 J.P. 537 ; 24 Digest 906, 58.

The Act of 1937 maintains this position so that it is illegal to use as a bakehouse a basement bakehouse which was not in use on the 30th July 1937, *and* certified as suitable by the district council before that date, but it strengthens the law as follows:—

- 1—If a basement bakehouse is not used as a bakehouse for a period exceeding 12 months it must not be so used again ; and
- 2—it is the duty of the district council, in the year commencing the 1st July, 1938, and thereafter in every fifth succeeding year, to re-examine every basement bakehouse in respect of which a certificate of suitability has been issued. If the council is not satisfied that the bakehouse is suitable for use as such as regards construction, height, light, ventilation and any hygienic respect, they *must* notify the occupier in writing that the certificate will cease to have effect after a period, not being less than one month, specified in the notice. Alternatively, they must give notice of continuance of the certificate. The occupier has a right of appeal to a court of summary jurisdiction, and a further appeal may be made to quarter sessions.

A case(o) was heard under the corresponding provisions of the Act of 1901 relative to the meaning of the expression “ used at the passing of the Act,” where an underground bakehouse which had been let as such for a long period, was temporarily unoccupied. It was held to be used as a bakehouse within the meaning of subsection (1) of section 101, *supra*. It should be noted, however, that under the Act of 1937 the period the bakehouse may remain unoccupied must not exceed twelve months, otherwise the premises may no longer be used as a bakehouse. The judgment of *Schwerzerhof v. Wilkins* is subject, therefore, to this qualification.

Finally, it will be observed that the district council is responsible for the enforcement of section 54, *infra*, in respect of *all* basement bakehouses. Under the Act of 1901 district councils were only responsible in the case of retail bakehouses.

In the case of any default by a local authority an inspector of factories has power to act in accordance with the provisions of section 10 of the Act of 1937(p).

It has been held(q) that the suitability of a basement bakehouse is to be decided with reference to conditions existing at the time of hearing an appeal against revocation of a certificate and not at the time notice of revocation was issued by the district council.

Section 54, Factories Act, 1937.—Basement bakehouses.

- (1) Without prejudice to the provisions of the last foregoing section, a basement bakehouse shall not be used as a bakehouse unless it was so used at the date of the passing of this

(o) *Schwerzerhof v. Wilkins*, [1898] 1 Q.B. 640 ; 24 Digest 906, 57.

(p) 30 Halsbury's Statutes 212.

(q) *Fulham Borough Council v. Hemmings (A. B.), Ltd.*, [1940] 2 K.B. 669 ; [1940] 3 All E.R. 625 ; Digest Supp.

Act and a certificate of suitability had been issued by the district council under an enactment repealed by this Act in respect thereof, and any basement bakehouse which, for a period exceeding twelve months, is not used as a bakehouse shall not be so used again.

- (2) It shall be the duty of every district council to carry out, in the year beginning at the date of the commencement of this Act and in every fifth succeeding year after that year, an examination of every basement bakehouse in respect of which a certificate of suitability has been issued and—
- (a) if as the result of the examination the council are not satisfied that the bakehouse is suitable for use as such as regards construction, height, light, ventilation and any hygienic respect, they shall give notice in writing that the certificate shall cease to have effect after the expiration of such period, being not less than one month, as may be specified in the notice, and the basement bakehouse shall not be used as a bakehouse after the expiration of that period ; or
 - (b) if the council are satisfied that the bakehouse is suitable as regards the matters aforesaid, they shall give notice in writing that the certificate shall continue to operate so long as the bakehouse may otherwise lawfully be used, but without prejudice to the power of the council to revoke the certificate as the result of a subsequent examination under this subsection.
- (3) Where the district council give notice that a certificate of a basement bakehouse is to cease to have effect, the occupier may, within twenty-one days of the notice, appeal by way of complaint to a court of summary jurisdiction, and the court may, if it is satisfied that the bakehouse is suitable as regards the matters aforesaid, by order direct that the certificate shall continue to operate as if a notice had been given under paragraph (b) of the last foregoing subsection or may by order extend the period at the expiration of which the certificate is to cease to have effect, and pending the final determination of the appeal the certificate shall continue to operate.
- (4) For the purpose of this section " basement bakehouse " means a bakehouse any baking-room of which is so situate that the surface of the floor is more than three feet below the surface of the footway of the adjoining street, or of the ground adjoining or nearest to the room ; and " baking-room " means any room used for baking, or for any process incidental thereto.
- (5) The prohibition of the use of basement bakehouses under this section shall be enforced by the district council, and the provisions of Part I of this Act as to the power to act in default of a district council shall apply in the case of any default of the district council under this section.

Bakehouses Welfare Order.—The Minister of Labour and National Service is empowered by section 46 of the Act of 1937(*r*) to make Orders dealing with various matters affecting factories and workshops, and in conformity with that Act, the Bakehouses Welfare Order(s) was made on the 26th February, 1927, which is administered by the factory inspectors.

(*r*) 30 Halsbury's Statutes 237.
S.F.D.A.

(*s*) S.R. and O., 1927, No. 191.

A somewhat similar Order^(t) was made on the 21st September, 1927, respecting biscuit factories.

The Bakehouses Order applies to all factories and workshops in which the baking of bread or flour confectionery is carried on, and if the occupier fails to comply with the requirements of the Order an offence against the Act is committed^(u).

BREAD AND FLOUR REGULATIONS.

The Minister of Health is empowered by section 30 of the Act of 1938 (see *ante*, p. 223) to make Bread and Flour Regulations for any of the following purposes :—

- (a) prescribing the kinds of flour other than wheat-flour and the other substances which may be used in the making of bread for sale ;
- (b) prescribing the descriptions under which bread made of flour other than wheat-flour may be sold, and the manner in which any such bread is to be marked ;
- (c) prohibiting or restricting the addition of any substance, or the application of any treatment, to flour intended for sale or for use in the making of bread for sale ;
- (d) prescribing the descriptions under which, and conditions subject to which, flour may be sold ; and
- (e) for preventing danger to health from the importation, preparation, transport, storage, exposure for sale and delivery of bread or flour.

Regulations have not yet been made under section 30, *supra*, but it is clear that paragraph (e) enables the Minister to prescribe conditions to be adopted in bakehouses where bread or flour is prepared or stored.

ADULTERANTS IN BAKEHOUSES.

Section 31 of the Act of 1938 (see *ante*, p. 224) prohibits any flour or other substance which under Bread and Flour Regulations may not be used in the making of bread for sale, being kept in a bakehouse.

WRAPPING OF BREAD, ETC.

A local authority (see *ante*, p. 18) may make byelaws in accordance with section 15 of the Act of 1938 (see *ante*, p. 317) for securing the observance of sanitary and cleanly conditions and practices in connection with the handling, wrapping and delivery of bread, etc. Up to date the Ministry of Health have not issued Model Byelaws under section 15, *supra*.

(t) Biscuit Factories Welfare Order, 1927 ; S.R. and O., 1927, No. 872.

(u) Sect. 130, Factories Act, 1937 ; 30 Halsbury's Statutes 288.

CHAPTER 18.

FRIED-FISH SHOPS.

FISH-FRYING AS AN OFFENSIVE TRADE.

Prior to the passing of the Public Health Act, 1936, the trade of fish-fryer was commonly regarded as an offensive trade(*a*) and in a number of areas it had by order been declared a scheduled offensive trade in accordance with the procedure laid down in section 51 of the Public Health Acts Amendment Act, 1907(*b*), thereby becoming subject to the provisions of section 112 of the Public Health Act, 1875(*c*).

The Local Government and Public Health Consolidation Committee in their Second Interim Report(*d*), which dealt with the Public Health Act, 1936, stated that the Ministry of Health took the view that the trade of fish-frying need not be offensive if properly conducted but that it required regulation by means of appropriate byelaws. Accordingly the Act of 1936(*e*) provided that in any district where an Order made in accordance with section 51 of the Public Health Acts Amendment Act, 1907, *supra*, was in force immediately before the commencement of the Act of 1936, declaring that the trade of fish-frying was an offensive trade, such order, in so far as it affected such trade, ceased to have effect on the 1st of October, 1940 (except for the purposes of any planning scheme—see *post*, p. 461), but without prejudice to the making of a new Order under paragraph (ii) (b) of subsection (1) of section 107 of the Public Health Act, 1936.

As a result of the above provisions, the trade of fish-frying is not now a scheduled offensive trade, subject to the provisions of the Public Health Act, 1936(*a*), unless so declared by an Order made by the appropriate local authority and confirmed by the Minister of Health, in accordance with the provisions of subsection (1) of section 107 of the Act of 1936, *supra*.

Where the Minister of Health confirms an Order declaring the trade of fish-frying to be an offensive trade in a district such trade cannot be established in the district without the consent of the local authority(*f*). The effect of this restriction

(*a*) As to offensive trades generally, see the author's "*Sanitary Administration*," Second Edition, 1944. London, Butterworth & Co., Ltd., pp. 251 *et seq.*

(*b*) 13 Halsbury's Statutes 930.

(*c*) 13 Halsbury's Statutes 670.

(*d*) Cmd. 5059, 1936, p. 99.

(*e*) Sect. 107(1), Public Health Act, 1936; 29 Halsbury's Statutes 403.

(*f*) *Ibid.*

is to prohibit absolutely the establishment of the trade of fish-frying without the prior consent of the local authority. This applies whether the trade is carried on so as to be a nuisance or not, and is designed so that the local authority may either prohibit the establishment of the trade if they consider it desirable to do so, or provide for the proper regulation of the trade when established. After the trade has been established with the consent of the local authority, the ordinary procedure may be followed if nuisance arises or contraventions of the law occur, subject to the provisions of section 107(3) of the Act of 1936(*g*), which enables the authority, in giving their consent to the establishment of the trade, to do so for a limited period, specified in the consent, subject to extension from time to time as they think fit. As a general rule, consent to the establishment of an offensive trade is granted for a period of twelve months, being renewed from year to year, subject to the conduct of the business being satisfactory. This is an extremely useful provision for securing the maintenance of a proper standard of business and enables necessary work to be carried out. The threat of withdrawal of consent is usually sufficient to secure the execution of the work required by the local authority.

Any person who carries on the trade of a fish-fryer in an area where the trade has been declared an offensive trade, without the prior consent of the local authority, is liable to a penalty in accordance with the provisions of section 107(2) of the Act of 1936(*h*), but a person aggrieved by the decision of an authority, either with regard to the establishment of the trade of fish-fryer or the limitation of time or refusal to extend such time, may appeal to a court(*i*).

In view of the changed outlook regarding the trade of fish-fryer arising since the passage of the Public Health Act, 1936, to which reference has been made, it is unlikely in the future that the trade will be dealt with as a scheduled offensive trade under the Public Health Act, 1936.

CONTROL BY MEANS OF BYELAWS.

Every *urban* authority may, and if required by the Minister of Health must, make byelaws with respect to the trade or business of fish-frying carried on in any premises or streets within their district in order to prevent any noxious or injurious effects of the trade or business. If immediately before the 1st October, 1937, section 113 of the Public Health Act, 1875(*k*) was in force in, or in any contributory place in, the district

(*g*) 29 Halsbury's Statutes 403.

(*h*) 29 Halsbury's Statutes 403.

(*i*) Sect. 107(4), Public Health Act, 1936 : 29 Halsbury's Statutes 404.

(*k*) 13 Halsbury's Statutes 671.

of a rural authority, the power to make byelaws applies to that authority as regards their district, or, as the case may be, as regards that contributory place. Any byelaws made by a local authority in accordance with the above provisions cease to have effect on the expiration of ten years from the date on which they are made. The provisions of section 250, Local Government Act, 1933(*l*), apply to byelaws made by a local authority with respect to the trade of fish-frying(*m*). Although a rural authority can only adopt byelaws under section 108, *supra*, if section 113 of the Public Health Act, 1875, was in force on the 1st October, 1937, such an authority may be invested with urban powers in accordance with section 13 of the Act of 1936(*n*) and may then make such byelaws.

The Ministry of Health have not yet issued a special Model Series of Byelaws relating to fish-frying, but the Model Byelaws relating to offensive trades in general, issued in 1935(*o*), contain byelaws for regulating this trade, of which the following is a summary :—

- 1—Vessels containing wet fish to be thoroughly cleansed at least once in every twenty-four hours ;
- 2—A sufficient number of impervious receptacles, provided with tightly fitting covers, to be kept for the storage of waste fish, etc. ;
- 3—All such waste fish, etc., to be kept in the receptacles ;
- 4—All such waste fish, etc., to be removed every twenty-four hours ;
- 5—All internal surfaces to be kept in good repair ;
- 6—Floor of building and all apparatus, utensils and appliances to be kept thoroughly clean ;
- 7—Room used for the frying of fish to be adequately ventilated ;
- 8—Every cooking-stove to be provided with side-screens and a suitable hood of impervious material, the hood to be connected to a flue, or every pan in such stove to be completely covered with a suitable cover connected to a flue ; and
- 9—Effectual means to be taken to render innocuous all gases and vapours produced during the frying of fish.

CONTROL UNDER THE TOWN AND COUNTRY PLANNING ACT.

Under the Town and Country Planning Act, 1932(*p*), a local authority are empowered to prepare a planning scheme which, when brought into operation, enables the authority to exercise control over the planning and development of the

(*l*) 26 Halsbury's Statutes 440 ; and as to the making of byelaws generally, see the author's "*Sanitary Administration*," Second Edition, 1944. London, Butterworth & Co., Ltd., pp. 5 *et seq.*

(*m*) Sect. 108, Public Health Act, 1936 ; 29 Halsbury's Statutes 405.

(*n*) 29 Halsbury's Statutes 330.

(*o*) Model Byelaws Series No. XVI, Offensive Trades, 1935.

(*p*) Sect. 6 ; 25 Halsbury's Statutes 475.

land subject to such scheme. The Ministry of Health have issued a series of model clauses for use in the preparation of planning schemes(*q*), and these include a reference to special industrial buildings, including offensive trades.

Generally speaking, these special industrial buildings may only be established with the consent of the local authority and in areas specially zoned for that class of building. Elsewhere, they may be prohibited altogether, or permitted by special consent of the local authority. Clause 28 and the Third Schedule define special industrial buildings as including, *inter alia*, any building designed for the purpose of carrying on the trade or business of a fish-fryer. So far as fish-frying is concerned it is noted that as this trade aims at the supply of cheap food it is important to avoid undue interference. Accordingly, it may be possible in the planning scheme to make special provision for its entry, subject to the consent of the local authority, into shopping areas and even into residential areas.

If Clause 35, *infra*, of the Model Series is included in the planning scheme adopted by the local authority, it will be seen that the provisions of the Public Health Act, 1936, relating to the control of fish-frying as a scheduled offensive trade (see *ante*, p. 459) will be suspended and the control of such trade will be effected under the planning scheme and not under the Act of 1936, except that the planning scheme does not affect the operation of any byelaws made by the local authority under section 108 of the act of 1936, *supra*.

Town and Country Planning Act, 1932.—Model Clauses of the Ministry of Health—Model Clause 33, Offensive Trades.

The provisions of this part of the scheme with regard to consent to the erection and use of buildings for trade or industry and appeals in connection therewith shall be in substitution for the provisions of section 107 of the Public Health Act, 1936, and the operation of these provisions is hereby suspended so far as is necessary for the purpose of this clause.

REGISTRATION OF FISH-FRYING PREMISES.

Section 14 of the Act of 1938(*r*) requires all premises used in connection with the manufacture of preserved food to be registered under that section by the local authority. For the purpose of the section the preparation of fish by any process of cooking is deemed to be the preservation thereof.

(*q*) Ministry of Health, Town and Country Planning, Model Clauses for use in the Preparation of Schemes, February 1937; it should be noted that the town-planning functions of the Ministry of Health have now been transferred to the Ministry of Town and Country Planning.

(*r*) 31 Halsbury's Statutes 263; and see *post*, p. 465

There is some doubt regarding the applicability of this section to the trade of fish-fryer. In a letter to the Secretary of the Sanitary Inspectors' Association, the Ministry of Health expressed the opinion that the registration of fish-frying premises was not required by section 14, *supra*. The Ministry stated—

“ I find that on March 21st we wrote to you, in reply to a letter of yours of March 13th, about fried-fish shops, to the effect that the application of section 14 of the Food and Drugs Act, 1938, in relation to any particular class of premises can only be decided authoritatively by the Courts. This is, of course, quite true, but as a result of some consideration in certain cases, the Minister has taken the view that it does not appear that fish fried for immediate sale and consumption is *ejusdem generis* ‘ Sausages or potted, pressed, pickled or preserved food ’ as referred to in (b) of subsection (2) of section 14 of the Food and Drugs Act, 1938, nor that the process of frying such fish is ‘ preparation ’ within the meaning of the last paragraph of that subsection.

“ Moreover, provision is made in section 108(1) of the Public Health Act, 1936, for the making of byelaws with respect to the trade or business of fish-frying carried on or in any premises or streets within a district in order to prevent any noxious or injurious effects of the trade or business, and the provisions of such byelaws would overlap. Had Parliament intended that the provisions of the Act of 1936 with respect to the trade or business of fish-frying should be superseded by those of section 14 of the Act of 1938, they could easily have provided for this, but they did not do so. In the circumstances, it seems that the particular provisions of the Act of 1936 would apply to premises used for the purpose of fish-frying and not the general ones of the Act of 1938.

“ I thought that in these circumstances I ought to let you know the view that has been taken in this Department.”

(May 1940.)

Notwithstanding the Ministry's view it is by no means certain that the registration of fish-frying premises cannot be insisted upon. It should be remembered that the provisions of the Public Health Act, 1936, to which reference has already been made (see *ante*, p. 459), are designed to prevent nuisance arising, whereas the provisions of the Food and Drugs Act, 1938, are concerned with preventing the contamination of food, with consequent danger to the public health. The two Acts are not, therefore, in conflict. It should be noted, however, that registration is not necessary where the premises are used primarily as a club, hotel, inn or restaurant. In a number of cases where fried fish is consumed on the premises the building may be classified as a restaurant and be exempt from registration.

Section 14 of the Act of 1938, *supra*, empowers the local authority to refuse the application for registration or, as the case may be, cancel registration of the premises, if it appears

to the authority that the premises do not satisfy the requirements of section 13 of the Act of 1938 (see *ante*, p. 313) or are otherwise unsuitable for use for the trade of fish-frying. A person aggrieved by the decision of a local authority under this section may appeal to a court of summary jurisdiction.

In the absence of a High Court decision it appears wise to register premises used for fish-frying in accordance with the procedure laid down in section 14, *supra*, except those used primarily as a club, hotel, inn or restaurant.

CHAPTER 19

FOOD-PREPARING PREMISES.

Local authorities are empowered to control premises used for the preparation of ice-cream, sausages or potted, pressed, pickled or preserved food intended for sale, in accordance with the provisions of section 14 of the Act of 1938, *infra*.

Section 14, Food and Drugs Act, 1938.—Registration of premises used in connection with the manufacture or sale of ice-cream, or preserved food, etc.

- (1) Subject to the provisions of this section, and of subsection (6) of the last preceding section, no premises shall be used for—
 - (a) the sale, or the manufacture for the purpose of sale, of ice-cream, or the storage of ice-cream intended for sale ;
or
 - (b) the preparation or manufacture of sausages or potted, pressed, pickled or preserved food intended for sale,unless they are registered under this section for that purpose by the local authority, and a person who uses any premises in contravention of the provisions of this subsection shall be guilty of an offence.
- For the purposes of this subsection, the preparation of meat or fish by any process of cooking shall be deemed to be the preservation thereof.
- (2) Subject to the following provisions of this section, the local authority shall, on the application of the occupier of, or of a person proposing to occupy, any premises, register those premises for the purposes of this section.
- (3) If it appears to the local authority that any premises for the registration of which application has been made under this section, or which are registered under this section, do not satisfy the requirements of the last preceding section, or are otherwise unsuitable for use for the purpose for which they are proposed to be used or are being used, the authority shall serve on the applicant for registration or, as the case may be, on the occupier for the time being of the premises, a notice stating the place and time, not being less than seven days after the date of the service of the notice, at which they propose to take the matter into consideration and informing him that he may attend before them, with any witnesses whom he desires to call, at the place and time mentioned to show cause why the authority shall not, for reasons specified in the notice, refuse the application or, as the case may be, cancel the registration of the premises.
- (4) If a person on whom a notice is served under the last preceding subsection fails to show cause to the satisfaction of the local authority, they may refuse the application or, as the case may be, cancel the registration of the premises, and shall forthwith give notice to him of their decision in the matter, and shall, if so required by him within fourteen days of their decision, give to him within forty-eight hours a statement of the grounds on which it was based,

- (5) A person aggrieved by the decision of a local authority under this section to refuse to register any premises, or to cancel the registration of any premises, may appeal to a court of summary jurisdiction.
- (6) Upon any change in the occupation of premises registered under this section, the incoming occupier shall, if he intends to use them for the purpose for which they are registered, forthwith give notice of the change to the local authority, who shall thereupon make any necessary alteration in their register.
If a person required to give a notice under this subsection fails to do so, he shall be liable to a fine not exceeding five pounds.
- (7) This section shall not apply in relation to premises used primarily as a club, hotel, inn or restaurant, and in relation to premises used as a theatre, cinematograph theatre, music hall or concert hall shall have effect as if in paragraph (a) of subsection (1) the words " the sale, or " and the words " or the storage of ice-cream intended for sale " were omitted.
- (8) If at the commencement of this Act local Act provisions with respect to the registration of premises used for any of the purposes mentioned in subsection (1) of this section were in force in a district, this section shall not apply to that district until the Minister, on the application of the local authority, declares it to be in force therein.
- (9) Where on an application made by a local authority under the last preceding subsection the Minister declares this section to be in force in the district of the authority, then, upon the declaration taking effect, such of the local Act provisions as may be specified in the declaration shall be repealed or, as the case may be, shall be repealed as respects the district of the authority, but any premises which immediately before the repeal of those provisions were registered thereunder for any purpose mentioned in subsection (1) of this section shall be deemed to have been registered under this section for that purpose.

The subject of ice-cream is dealt with in detail in Chapter 7, *ante*, p. 211. It should be noted that section 14, *supra*, does not apply in relation to premises which are used for the preparation, sale or storage of articles prepared from, or consisting of, materials other than those of animal or vegetable origin, but are not otherwise used for any purpose in connection with the preparation, storage or sale of food(a).

Subsection (1) of section 14, *supra*, includes under the definition of " preservation " the preparation of meat or fish by any process of cooking. There is some doubt as to the application of section 14, *supra*, to the trade of fish-fryer, and in a letter to the Sanitary Inspectors' Association (see *ante*, p. 463) the Ministry of Health expressed the view that registration of fish-frying premises was not required by that section. As to fish-frying premises generally, see Chapter 18, *ante*, p. 459.

Although the power to refuse or cancel registration contained in subsection (3), *supra*, applies to the *occupier* of the food-preparing premises it should be observed that *any person*

(a) Sect. 13(6), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 262.

who uses any such premises which are not registered with the local authority may commit an offence under subsection (1). It is clear, therefore, that persons other than the actual occupier of food-preparing premises may be liable to a penalty in respect of the use of unregistered premises. In this connection it should be remembered that the expression "person" includes a limited company(b). In some cases it may be possible for the person charged to avail himself of the provisions of section 83 of the Act of 1938 (see *ante*, p. 13) and have brought before the court some other person whom he alleges is responsible for the commission of an offence under section 14, *supra*.

Registration of food-preparing premises is not a personal matter under section 14, *supra*, as in the case of slaughter-houses (see *ante*, p. 259), but relates to the premises and not the occupier. As to the position under some Local Acts, however, see *post*, p. 470. Presumably a change of tenancy does not affect the registration of the premises, although the new occupier is required by subsection (6), *supra*, to notify the local authority of the change. It may happen, of course, that the new occupier so alters the premises that the local authority would be justified in taking action under subsection (3), *supra*, with a view to the cancellation of the registration, originally recorded on the application of a previous tenant. Otherwise a change of tenancy does not affect the matter, and it would seem, therefore, that the provisions of section 97 of the Act of 1938 (see *ante*, p. 15) relative to the temporary continuance of registration on the death of the occupier of registered food-preparing premises do not apply to premises registered under section 14, *supra*.

The registration of food-preparing premises in accordance with section 14, *supra*, is supplementary to the provisions of section 13 of the Act of 1938 relative to the precautions to be taken against the contamination of food—section 13 is dealt with in detail in Chapter 11, *ante*, pp. 313 *et seq.*

It should be noted that the procedure with respect to the refusal to register or cancellation of registration of food-preparing premises, contained in subsection (3) of section 14, *supra*, is not the same as the somewhat similar procedure laid down in section 22 of the Act of 1938 (see *ante*, p. 369) where the local authority are empowered to refuse or cancel registration of retail dairymen where they are satisfied that the "public health is, or is likely to be, endangered by any act or default of a person who has applied to be, or is, registered as a retail purveyor of milk." So far as food-preparing premises are concerned, registration may be refused or cancelled only if the premises do not satisfy the following provisions of section 13 of the

(b) Sect. 2, Interpretation Act, 1889 ; 18 Halsbury's Statutes 992.

Act of 1938 or are otherwise *unsuitable* for the purpose for which they are proposed to be used. In the case of food-preparing premises the question of danger to the public health does not arise.

Section 13, Food and Drugs Act, 1938.—Provisions as to rooms where food intended for sale is prepared or stored, etc.

(1) Subject to the provisions of this section, the following provisions shall have effect in relation to every room in which any food intended for human consumption, other than milk, is prepared for sale or sold, or offered or exposed for sale, or deposited for the purpose of sale or of preparation for sale, that is to say—

- (a) no sanitary convenience, dustbin or ashpit shall be within, or communicate directly with, the room, or be so placed that offensive odours therefrom can penetrate into the room ;
- (b) no cistern for the supply of water to the room shall be in direct communication with, or discharge directly into a sanitary convenience, and there shall not be within the room any outlet for the ventilation of a drain, or, except with the approval of the local authority, an inlet into any drain conveying sewage or foul water ;
- (c) the walls, ceiling, floor, windows and doors of the room shall be kept in a proper state of repair ;
- (d) the walls, ceiling, and doors of the room shall be painted, whitewashed, cleansed or purified as often as may be necessary to keep them clean and the windows of the room shall be kept clean ;
- (e) the room shall not be used as a sleeping-place, and, so far as may be necessary to prevent risk of infection or contamination of food in the room, no sleeping-place adjoining the room shall communicate therewith except through the open air, or through an intervening ventilated space ;
- (f) except in the case of an artificially refrigerated room, suitable and sufficient means of ventilation shall be provided, and suitable and sufficient ventilation shall be maintained ;
- (g) no refuse or filth, whether solid or liquid, shall be deposited or allowed to accumulate in the room, except so far as may be necessary for the proper carrying on of the trade or business for which the room is used, and the floor of the room shall be cleansed as often as may be necessary to keep it clean ;
- (h) cleanliness shall be observed by persons employed in the room, both in regard to the room and all articles, apparatus and utensils therein, and in regard to themselves and their clothing ; and
- (i) there shall be provided in, or within reasonable distance of, the room suitable washing basins and a sufficient supply of soap, clean towels and clean water, both hot and cold, for the use of persons employed in the room :

Provided that paragraph (i) of this subsection shall not apply in relation to a room which is used for the sale or storage, or for the sale and storage, of food contained in containers of such materials, and so closed, as to exclude all risk of contamination, but is not otherwise used for any purpose in connection with the preparation, storage or sale of food.

Although these provisions are fairly extensive, collectively they are somewhat more restricted than those in section 22 of the Act of 1938. At the same time, however, it is easier to deal with the more or less specific items listed in section 13 rather than the more general phrase "the public health is endangered." Apart from the requirements of section 13, *supra*, registration of food-preparing premises which are "otherwise unsuitable for use" as such, may be refused or cancelled. The procedure to be followed in cases of refusal or cancellation of registration should follow the lines laid down with respect to holders of licences to sell designated milk (see *ante*, p. 435) and retail purveyors of milk (see *ante*, p. 369). It is particularly important to note that in considering a matter of this kind the local authority are acting in a quasi-judicial capacity, and care must be taken to deal with the matter impartially and every facility afforded the occupier of the premises to state his case before the authority or the appropriate committee(c).

Where a person is aggrieved by the decision of a local authority to refuse or cancel the registration of any food-preparing premises, and he avails himself of the right of appeal to a court of summary jurisdiction in accordance with subsection (5) of section 14 (see *ante*, p. 465), he may carry on business and use the premises for the purpose of the preparation of food until the appeal is finally disposed of or abandoned, or has failed for want of prosecution(d).

It will be observed that section 14 of the Act of 1938 does not apply to premises used *primarily* as a club, hotel, inn or restaurant. Where any of the above purposes is not the main purpose of the premises, such as a confectioner's shop with a subsidiary restaurant business, they are not exempt from registration. In this respect each case will have to be dealt with on its merits, as no hard-and-fast rule can be laid down. In general, it is safer to register in all cases of doubt.

Byelaws with respect to the handling, wrapping, etc., of food and the sale of food in the open air.—Local authorities may make byelaws for securing the observance of sanitary and cleanly conditions and practices in connection with the handling, wrapping and delivery of food for human consumption, as to which, see Chapter 11, *ante*, p. 317.

Food-poisoning.—Reference should be made to Chapter 12, *ante*, p. 322, for details with respect to food-poisoning. The proper registration and subsequent control of all food-preparing premises will do much to prevent outbreaks of food-poisoning.

(c) As to appointment and delegation to committee and sub-committees, see *ante*, p. 29.

(d) Sect. 90, Food and Drugs Act, 1938; 31 Halsbury's Statutes 308; and see *ante*, p. 15.

Position under Local Acts.—Where the registration of food-preparing premises was governed by the provisions of a Local Act on the 1st October, 1939, section 14 of the Act of 1938 (see *ante*, p. 465) does not apply until the Minister of Health, on the application of the local authority, declares it to be in force in their district(*e*). Before deciding to apply to the Minister for his approval to the operation within their district of section 14, *supra*, the local authority should be satisfied that the procedure in their own Local Act is less satisfactory than that in section 14.

It should be noted, however, that the repeal of Local Act provisions may be restricted to a part only of such provisions. For example, the Minister of Health has repealed that portion of section 91 of the Oxford Corporation Act, 1933, which relates to the registration of premises(*f*) with the result that, in the City of Oxford, *premises* used for the manufacture or sale of ice-cream or for the preparation or manufacture of preserved meat will henceforth be subject to registration in accordance with the provisions of section 14 of the Act of 1938 detailed in this chapter, *ante*, whilst the *persons* carrying on the business of a manufacturer or vendor of or dealer in ice-cream or of a manufacturer of preserved meat will be subject to registration in accordance with the appropriate provisions of section 91 of the Oxford Corporation Act, 1933, *infra*.

Section 91, Oxford Corporation Act, 1933.—Registration of ice-cream and potted and preserved food manufacturers and premises.

- (1) (a) No person shall carry on the business of a manufacturer or vendor of or dealer in ice-cream or of a manufacturer of preserved meat within the City unless he be registered by the Corporation.
.....
- (c) Any person who offends against the provisions of this subsection shall be liable to a penalty not exceeding forty shillings and to a daily penalty not exceeding twenty shillings.
- (2) (a) The Corporation may refuse to register any such person or (after giving one month's notice in writing to the person registered or in whose name any such premises are registered) revoke the registration of any such person as regards any person on the ground that the public health is or is likely to be endangered by any act or default of the person who is registered or who seeks to be registered as a manufacturer or vendor of or dealer in ice-cream or as a manufacturer of preserved meat in relation to the quality storage or distribution of

(*e*) Sect. 14(8), Food and Drugs Act, 1938; 31 Halsbury's Statutes 264; and see *ante*, p. 466.

(*f*) See Oxford (Food) Order, 1945, 10th December, 1945.

the ice-cream or preserved meat.....

.....
 Provided that before refusing or revoking such registration the Corporation shall serve upon the applicant for registration or the person registered or in whose name such premises are registered a notice to appear before them not less than seven days after the date of the notice to show cause why the Corporation should not for reasons to be specified in the notice refuse to register or revoke the registration of the person.....

- (b) If the Corporation should refuse to register or should revoke the registration of any such person..... they shall deliver to the person applying for such registration or the person registered..... a statement in writing of the ground or grounds on which such refusal or revocation is based. Notice of the right of appeal next hereinafter mentioned shall be endorsed on every such notice.
 - (c) Any person aggrieved by any such refusal or revocation may appeal to a court of summary jurisdiction provided that such appeal be made within fourteen days from the date of a refusal to register or of the notice of revocation.
 - (d) Any person so appealing shall give written notice of such appeal and of the grounds thereof to the town clerk before lodging his appeal.
 - (e) On any such appeal the court may by order confirm the refusal or revocation or direct the Corporation to register the person or to retain them on the register and the Corporation shall comply with any such direction.
- (3) In this section—
 the expression “ice-cream” includes any other similar commodity ; and
 the expression “preserved meat” includes sausages and any potted, pressed, pickled or preserved meat, fish or other food.
- (4) The provisions of this section shall not in any way affect the operation of the Factory and Workshop Act, 1901.
 - (5) The provisions of this section shall not apply to any premises used as a club, hotel or restaurant or as railway refreshment rooms or as a theatre, music-hall or cinematograph theatre or other similar place of entertainment.

CHAPTER 20.

MARKETS AND COLD STORES.

The law relating to markets and cold stores established or owned by local authorities is contained in Part V of the Act of 1938(*a*) which adopted and applied to local authorities outside London many of the corresponding sections of the Markets and Fairs Clauses Act, 1847(*b*). There are various types of market, however, according to the method of establishment, *viz.* :—

- 1—Franchise markets held under charters or letters patent from the Crown, or by prescription ;
- 2—Markets established under local Acts ;
- 3—Markets established under the Food and Drugs Act, 1938 ;
- 4—Markets established under the Diseases of Animals Act, 1894 ; and
- 5—Markets for a particular product established by a scheme approved by the Minister of Agriculture, in accordance with section 6(2) of the Agricultural Marketing Act, 1931(*c*).

Markets of classes (1) and (2) are frequently controlled by local authorities, who alone can be responsible for those in classes (3) and (4).

FRANCHISE MARKETS.

Although rarely exercised now, the Crown has always had, by the common law, a prerogative of authorising the establishment of markets and in former times did so freely, by charters or letters patent. The privilege of establishing a market in this way was conferred either on an individual person and his heirs or to a body corporate and their successors. "The individual was often the lord of a manor, the body corporate was generally the corporation of a city or borough, and the area to which the grant limited the privilege was usually the manor or the city or borough. The privilege of holding a market thus conferred by the Crown upon a subject is in law a franchise, a species of property which is in the nature of an incorporeal hereditament. If the grant gives also the liberty of taking tolls, that liberty is a separate franchise"(*d*). The grant of a new market by the Crown must not interfere with the privileges of an existing market, and the owner of such a market is entitled to have his rights protected.

(*a*) 31 Halsbury's Statutes 282.

(*b*) 11 Halsbury's Statutes 452.

(*c*) 24 Halsbury's Statutes 19.

(*d*) *Local Government Law and Administration*, Lord Macmillan, London, Butterworth & Co., Ltd., vol. 8, Title : "Markets and Fairs," p. 341.

Where the actual grant from the Crown cannot be produced but evidence is available to show that the market has been held from time immemorial, it may be possible to establish the right to hold the market by prescription(*e*).

A local authority may acquire a franchise market in accordance with the provisions of section 44 of the Act of 1938, *infra*, and the owner of such a market has the right to sell or lease it to the local authority in accordance with section 45 (see *post*, p. 475).

As a general rule a franchise market may be held anywhere within the borough, parish or manor, and not merely at one particular place or places(*f*).

STATUTORY MARKETS.

Whereas the validity of franchises granted by the Crown for the establishment of markets can be challenged, markets authorised by statute cannot be disputed. "In authorising fresh markets the Crown must respect existing rights, while Parliament can deal with them as it pleases. Charter markets are liable to forfeiture for misuse by process of *scire facias* by or on behalf of the Crown(*g*); but this process cannot be invoked against statutory markets(*h*). As regards both rights and remedies, provisions can be introduced into statutes which would be void if inserted in charters; the Crown must follow the law, but Parliament can alter it. A statutory market is not, strictly speaking, a franchise(*i*). Where a local Act has been obtained for the regulation of a market which formerly existed by charter or prescription, the question whether the old franchise remains or has been extinguished and replaced by purely statutory rights can be determined only by considering the terms of the local Act(*k*)"(*l*).

Establishment of market by local authority.—An urban authority, or with the consent of the Minister of Health, a rural authority, may establish or acquire a market in accordance with the provisions of section 44 of the Act of 1938, *infra*.

(*e*) See *ibid*, p. 342.

(*f*) *R. v. Colterill* (1817), 1 B. & Ald. 67; 33 Digest 534, 111.

Stepney Corp'n. v. Gingell, Son and Foskett, Ltd., [1909] A.C. 245; 33 Digest 533, 104.

(*g*) *Great Eastern Rail. Co. v. Goldsmid* (1884), 9 App. Cas. 927 at p. 965; 33 Digest 524, 18.

(*h*) *New Windsor Corp'n. v. Taylor*, [1899] A.C. 41 at p. 50; 26 Digest 352, 783.

(*i*) *Ibid*, p. 48, *per* Lord Watson.

(*k*) *Ibid*. In *Manchester Corp'n. v. Lyons* (1882), 22 Ch. D. 287; 33 Digest 551, 342, and *Birmingham Corp'n. v. Foster* (1894), 70 L.T. 371; 33 Digest 552, 343, it was held that the market rights had become purely statutory; and in *Stevens v. Chown*, *Stevens v. Clark*, [1901] 1 Ch. 894; 33 Digest 559, 415, that the old franchise tolls had not been abolished.

(*l*) Macmillan, *op cit.*, pp. 342, 343.

Section 44, Food and Drugs Act, 1938.—Establishment or acquisition of market by local authority.

- (1) Subject to the provisions of this section, an urban authority and, with the consent of the Minister, a rural authority may—
- (i) establish a market within their district ;
 - (ii) acquire by agreement (but not otherwise), either by purchase or on lease, the whole or any part of an existing market undertaking within their district, and any rights enjoyed by any person within their district in respect of a market and of tolls ;
- and, in either case, may provide—
- (a) a market place with convenient approaches thereto ;
 - (b) a market-house and other buildings convenient for the holding of a market.

- (2) Without the consent of the person concerned, no market shall be established in pursuance of this section so as to interfere with any rights, powers or privileges enjoyed within the district in respect of a market by any person :

Provided that, for the purposes of this subsection, another local authority shall not be deemed to be enjoying any rights, powers or privileges within the district by reason only of the fact that they have established a market within their own district either under paragraph (i) of the preceding subsection or (otherwise than by acquisition of a then existing market) under any corresponding provision repealed by this Act, or by the Public Health Act, 1875.

- (3) In the following provisions of this Act relating to markets, the expression " market authority " means a local authority who have established or acquired a market under this section, or under any corresponding enactment repealed by this Act or by the Public Health Act, 1875.

It should be noted that an authority may only acquire an existing market by agreement, and that a new market may only be established within their district. Two or more local authorities are entitled to combine for the purposes of any of their functions under the Act of 1938^(m) so that it would appear that such authorities are entitled to establish a joint market within the area of the authorities concerned.

Where a local authority, by virtue of section 44(1)(ii), *supra*, desire to acquire a franchise market (see *ante*, p. 472), it should be noted that the market franchise is distinct from the franchise to levy tolls⁽ⁿ⁾. Subject to the provisions of sections 46 and 57 of the Act of 1938 (see *post*, p. 476 and *ante*, p. 259) it would appear that an authority is entitled to alter days, hours and tolls charged when they acquire a franchise market, but in that event it would seem that the market would become a statutory market and the franchise rights would cease to apply.

^(m) See sect. 272, Public Health Act, 1936 ; 29 Halsbury's Statutes 498 incorporated with the Food and Drugs Act, 1938, by sect. 96 ; 31 Halsbury's Statutes 311.

⁽ⁿ⁾ *Heddy v. Wheelhouse* (1597), Cro. Eliz. 558 and *Newcastle (Duke) v. Worksop U.C.*, [1902] 2 Ch. 145 ; 33 Digest 540, 176.

A local authority are not entitled to establish a market so as to interfere with any rights, powers or privileges of any person within the district in respect of a market. Prior to the passage of the Act of 1938 the Ministry of Health were advised that the prohibition on the establishment of a market which would interfere with the rights, etc., of any person made it impossible for a local authority to establish a market under section 166 of the Public Health Act, 1875(*o*), if some neighbouring authority had already done so, and the two sites were within seven miles of each other. The proviso to subsection (2) of section 44, *supra*, removes this restriction, so that a local authority may now establish a market under the Act of 1938, notwithstanding that another authority had already done so at a point in their district which is less than seven miles from the site of the proposed market. It should be noted, however, that the proviso referred to applies only to a statutory market; it leaves unaltered the rights of a local authority who own a franchise market(*p*).

Where a local authority desire land for the purpose of establishing a market in accordance with the provisions of section 44, *supra*, they may acquire it by agreement(*q*) or compulsorily(*r*). Land already in their possession may be appropriated for the purpose(*s*).

Power of owner to sell market to local authority.—Section 45 of the Act of 1938, *infra*, enables the owner of a market undertaking to sell or lease it to a local authority.

Section 45, Food and Drugs Act, 1938.—Power of owner of market to sell it to a local authority.

The owner of a market undertaking, or of any rights in respect of a market and of tolls, whether established under, or enjoyed by virtue of, statutory powers or not, may sell or lease to a local authority the whole or any part of his market undertaking or rights, but subject to all liabilities attaching thereto:

Provided that a sale by a market company under this section must be authorised, if the company is a company within the meaning of the Companies Act, 1929, by a special resolution of the members passed in the manner provided in Part IV of that Act, and, if the company is not such a company, by a resolution passed by three-fourths in number and value of the members present, either personally or by proxy, at a meeting specially convened for the purpose with notice of the business to be transacted.

(*o*) 13 Halsbury's Statutes 694.

(*p*) See Third Interim Report, Local Government and Public Health Consolidation Committee, Cmd. 5628 (1937).

(*q*) Sect. 157, Local Government Act, 1933; 26 Halsbury's Statutes 391.

(*r*) Sect. 306, Public Health Act, 1936; 29 Halsbury's Statutes 517; incorporated with the Food and Drugs Act, 1938, by sect. 96.

(*s*) Sect. 163, Local Government Act, 1933; 26 Halsbury's Statutes 396.

It will be observed that this section enables a person to sell or lease to a "local authority" (see *ante*, p. 18), whereas the power to establish a market under section 44 of the Act of 1938 (see *ante*, p. 474) is restricted to a market authority(*t*), which may or may not be a rural authority. The consent of the Minister of Health is not required to the purchase or leasing of a market under section 45, *supra*, although sanction to the borrowing of money for the purpose is needed. Reading the two sections (44 and 45) together it is clear that an urban authority can establish or purchase or lease a market without the consent of the Minister of Health, but a rural authority require such consent. In either case loan sanction is required where borrowing is necessary.

Markets established under the Diseases of Animals Acts.—

A local authority under the Diseases of Animals Acts (see *post*, p. 488) may provide, erect and fit up wharves, stations, lairs, sheds and other places for the landing, reception, keeping, sale, slaughter or disposal of foreign or other animals, carcasses, fodder, litter, dung and other things(*u*). Section 32(3) of the Act of 1894 provides that any market established by a Diseases of Animals Acts authority shall be a market for the purposes of the Markets and Fairs Clauses Act, 1847(*v*), the provisions of which are incorporated with the Act of 1894. Section 32(3), *supra*, provides that byelaws made by a local authority with respect to a market established under the Act of 1894 shall be subject to the approval of the Minister of Agriculture and Fisheries.

It should be noted that no premises may be used as a livestock market which were not lawfully used for that purpose at some time during the year ended 30th November, 1936, unless the premises are approved for the purpose by the Livestock Commission set up under section 1 of the Livestock Industry Act, 1937(*w*). The Commission is suspended during the war emergency(*x*).

MANAGEMENT OF MARKETS.

Market days and hours.—With the approval of the Minister of Health a market authority may appoint days on which, and the hours during which, markets are to be held(*y*). It

(*t*) See sect. 44(3), Food and Drugs Act, 1938; 31 Halsbury's Statutes 282; and see *ante*, p. 474.

(*u*) Sect. 32(1), Diseases of Animals Act, 1894; 1 Halsbury's Statutes 406.

(*v*) 11 Halsbury's Statutes 452.

(*w*) 30 Halsbury's Statutes 3.

(*x*) S.R. and O., 1939, No. 1303.

(*y*) Sect. 46, Food and Drugs Act, 1938; 31 Halsbury's Statutes 283.

should be noted that in the case of a franchise market (see *ante*, p. 472), a market can only be held on the days authorised by the franchise charter(z), but if the local authority have acquired the franchise market in accordance with the provisions of section 44 of the Act of 1938 (see *ante*, p. 474) it would appear that they can alter the days and times of the market in accordance with section 44, *supra*, subject to the approval of the Minister of Health.

Stallages, tolls and other charges.—Section 47 of the Act of 1938, *infra*, enables the Minister of Health to approve of a table of stallages, tolls and other charges adopted by a market authority with respect to the market under their control.

Section 47, Food and Drugs Act, 1938.—Stallages, tolls and other charges.

- (1) The Minister may, on the application of a market authority, approve for the purposes of the market a table of stallages, tolls and charges, and the authority may demand in respect of the market, and in respect of the weighing and measuring of articles and vehicles, either the stallages, tolls and charges approved by the Minister, or such less stallages, tolls and charges as they may from time to time determine.
- (2) A market authority who provide a weighing machine for weighing cattle, sheep or swine may demand in respect of the weighing of such animals charges not exceeding those specified in the Second Schedule to this Act, or such other charges as the Minister may from time to time approve.
- (3) The authority shall keep exhibited in conspicuous places in the market place and in any market house tables stating in large and legibly printed characters the several stallages, tolls and charges payable under this Act, and shall keep so much of the tables as relates to charges payable in respect of the weighing of vehicles, or, as the case may be, in respect of the weighing of animals, conspicuously exhibited at every weighing machine provided by them in connection with the market for the purpose in question.
- (4) A person who demands or accepts a stallage, toll or charge greater than that for the time being authorised shall be liable to a fine not exceeding forty shillings.
- (5) Nothing in this section shall apply in relation to rents charged by a market authority in respect of the letting of accommodation within their market for any period longer than a week.

Under the repealed provisions(a) the approval of the Minister was only necessary in respect of tolls, but section 47, *supra*, requires his approval to all the charges made by the local authority in respect of the market. It should be noted that where a weighing machine is provided for the weighing of cattle, sheep or swine(b), charges for the weighing of such

(z) *A.-G. v. Horner* (1884), 14 Q.B.D. 245 ; 33 Digest 527, 45.

(a) Sect. 36, Markets and Fairs Clauses Act, 1847 ; 11 Halsbury's Statutes 463 ; and sects. 166 and 167, Public Health Act, 1875 ; 13 Halsbury's Statutes 694, 695.

(b) See sect. 51(2), Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 285 ; and see *post*, p. 481.

animals may be made not exceeding those specified in the Second Schedule to the Act of 1938, *viz.* :—

Cattle .. .. .	..	6d. per head.
Sheep or swine ..	..	3d. for every 5, or less number.

Unless the table of charges is kept conspicuously exhibited in the market place in accordance with subsection (3) of section 46, *supra*, there will be no liability to pay. It has been held that the table must show the charges actually made and not merely of the approved maxima(c). A penalty may be imposed on any person who tampers with, pulls down, injures or defaces any notice put up by a local authority(d).

Payment of stallages, tolls, etc.—Charges made for the facilities provided by a local authority at a market are due on demand by an authorised officer(e) in accordance with the provisions of section 48 of the Act of 1938, *infra*. It will be observed that subsection (3), *infra*, applies only to animals(f).

Section 48, Food and Drugs Act, 1938.—Time for payment of stallages, etc.

- (1) Subject to the provisions of this section, stallages, tolls and charges payable in respect of the market shall be paid from time to time on demand to an authorised market officer.
- (2) Charges payable in respect of the weighing or measuring of articles, vehicles or animals shall be paid to an authorised market officer by the persons bringing the articles, vehicles or animals to be weighed or measured before they are weighed or measured.
- (3) Tolls payable in respect of animals brought to the market for sale shall be payable and may be demanded by an authorised market officer so soon as the animals in respect of which they are payable are brought into the market place and before they are put into any pen, or tied up in the market place, but further tolls shall be payable and may be demanded in respect of any of the animals which are not removed within one hour after the close of the market.

Recovery of stallages, etc.—If any person liable to pay any stallage, toll or other charge authorised in accordance with section 47 of the Act of 1938 (see *ante*, p. 477) does not do so when lawfully demanded, the market authority may, by any authorised market officer, levy it by distress of all or any of the animals, poultry or other articles in respect of which the charge is payable, or of any other animals, poultry or

(c) *Gregson v. Potter* (1879), 4 Ex. D. 142 ; 41 Digest 962, 8555.

(d) See sect. 289, Local Government Act, 1933 ; 26 Halsbury's Statutes 458.

(e) " *Authorised market officer* " means an officer of a market authority specially authorised by them to collect tolls, stallages and other charges in their market—sect. 100, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 313.

(f) " *Animal* " does not include bird ; *ibid* ; 31 Halsbury's Statutes 313.

articles in the market belonging to, or in the charge of, the person liable. Such charge may also be recovered either summarily as a civil debt(*g*) or as a single-contract debt in any court of competent jurisdiction(*h*). The clerk of a local authority is required to send to the Ministry of Health a return for each year ending 31st March of all sums levied or received in respect of markets, unless the accounts are subject to audit by the district auditor(*i*).

DISINFECTION OF MARKETS.

All market places and lairs used for the temporary accommodation of animals in connection with their sale at a market must be properly cleansed and disinfected(*k*) and the disinfectant used must be approved(*l*).

PROHIBITION OF CERTAIN SALES DURING MARKET HOURS.

Section 50 of the Act of 1938, *infra*, prohibits certain sales elsewhere than in the market, or in shops, etc., during normal market hours.

Section 50, Food and Drugs Act, 1938.—Sale elsewhere than in market, or in shops, etc., prohibited during market hours.

Any person, other than a licensed hawker or certificated pedlar, who on a market day and during market hours sells or exposes for sale in any place within the district of the market authority and within such distance from the market as the authority may by byelaw declare, except in his own dwelling-place or shop or in, or at the door of, any premises to a person resident therein, any articles specified in the byelaw, being articles commonly sold in the market, shall be liable to a fine not exceeding forty shillings.

The market authority shall keep exhibited in conspicuous positions in the vicinity of the market notices stating the effect of any byelaw made under this section.

The definition of *licensed hawker* is contained in section 2 of the Hawkers Act, 1888(*m*)—"hawker" means any person who travels with a horse or other beast bearing or drawing burden and goes from place to place or to other men's houses carrying to sell or exposing for sale any goods, wares, or mer-

(*g*) See the Summary Jurisdiction Act, 1879; 11 Halsbury's Statutes 323; the complaint must be laid within six months from the date when the charge became due.

(*h*) Sect. 49, Food and Drugs Act, 1938; 31 Halsbury's Statutes 284.

(*i*) Sect. 244, Local Government Act, 1933; 26 Halsbury's Statutes 437.

(*k*) Markets, Sales and Lairs Orders, 1925, 1926 and 1927—S.R. and O., 1925, No. 1349; S.R. and O., 1926, No. 546; and S.R. and O., 1927, No. 982.

(*l*) Diseases of Animals (Disinfection) Order, 1938; S.R. and O., 1938, No. 19.

(*m*) 16 Halsbury's Statutes 579.

chandise, or exposing samples or patterns of any goods, wares or merchandise to be afterwards delivered, and includes any person who travels by any means of locomotion to any place in which he does not usually reside or carry on business, and there sells or exposes for sale any goods, wares or merchandise in or at any house, shop, room, booth, stall or other place whatever hired or used by him for that purpose. A *certificated pedlar* means a pedlar, petty chapman, tinker, caster of metals, mender of chairs or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods, wares or merchandise, or procuring orders for goods, wares or merchandise immediately to be delivered, or selling or offering for sale his skill in handicraft(*n*).

It has been held that for an offence to be committed against section 50, *supra*, both the making of the contract and the delivery must be within the prohibited area(*o*). It will be noted that the provisions of section 50, *supra*, do not apply to sales in the seller's own dwelling-place or shop. It has been held that the following cases do not come within this exemption: ship moored to wharf in canal(*p*); covered, enclosed skittle-ground which seller hired temporarily to sell his goods(*q*); yard with pens behind inn, which a pig-seller similarly hired(*r*); large yard with sheds occupied by seller adjacent to his house and used by him for sale of his own sheep(*s*); and extensive premises comprising hall and yard similarly occupied and used for sale by public auction of other persons' cattle and sheep(*t*). On the other hand, it was held(*u*) that a wooded shed attached to a house and shop, which had long been used for exposing vegetables for sale, was part of the house or shop; and in a further case(*v*) that premises came within the exemption, though part only were used as a shop, the other part being a warehouse where goods were sold on commission.

PROVISIONS WITH RESPECT TO WEIGHING OF GOODS.

Verification of weighing machines, etc.—Section 51 of the Act of 1938, *infra*, requires every market authority to provide

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- (*n*) Sect. 3, Pedlars Act, 1871; 11 Halsbury's Statutes 471.
 - (*o*) *Stretch v. White* (1861), 25 J.P. 485; 33 Digest, 553, 358.
 - (*p*) *Wiltshire v. Baker* (1861), 11 C.B.N.S. 237; 33 Digest 556, 382.
 - (*q*) *Hooper v. Kenshole* (1877), 2 Q.B.D. 127; 33 Digest 557, 389.
 - (*r*) *Perkins v. Arber* (1873), 37 J.P. 406; 33 Digest 556, 387.
 - (*s*) *M'Hole v. Davies* (1875), 1 Q.B.D. 59; 33 Digest 556, 388.
 - (*t*) *Fearon v. Mitchell* (1872), L.R. 7 Q.B. 690; 33 Digest 526, 39.
 - (*u*) *Ashworth v. Heyworth* (1869), L.R. 4 Q.B. 316; 33 Digest 556, 385.
 - (*v*) *Haynes v. Ford*, [1911] 2 Ch. 237; 33 Digest 557, 390.

sufficient scales, etc., for weighing or measuring articles sold in the market. The power to provide scales, weighing machines, etc., extends to the provision of buildings or other premises necessary for the purpose, together with such furniture, apparatus and instruments as may be reasonably necessary(*w*).

Section 51, Food and Drugs Act, 1938.—Provision and verification of weighing machines, scales, etc.

- (1) A market authority shall provide sufficient scales, weights, measures and weighing machines for weighing or measuring articles sold in the market and vehicles in which articles are brought for sale in the market, and shall appoint officers to attend to the weighing and measuring of such articles and vehicles.
 - (2) A market authority in whose market cattle, sheep or swine are sold shall, unless there is in force an order of the Minister of Agriculture and Fisheries declaring that the circumstances are such as to render compliance with this subsection unnecessary, provide to the satisfaction of that Minister a weighing machine, or weighing machines, adapted for weighing such animals and appoint officers to attend to the weighing thereof.
- A weighing machine provided under this subsection shall for the purposes of section one of the Markets and Fairs (Weighing of Cattle) Act, 1926, be deemed to have been provided for the purpose of complying with the provisions of the principal Act therein referred to.
- (3) The authority shall cause all such scales, weights, measures and weighing machines to be verified at least twice in every year by the inspector of weights and measures acting for, or for the area comprising, their district.

It has been held that a market authority are entitled to erect a permanent weighing machine on the highway where a cattle market is held on the highway which had been dedicated to the public subject to the owner of the soil retaining his right to hold a market thereon(*x*). The requirements of the section are satisfied if the market authority provide a weighbridge in the market even though it is not in that portion of it used by the livestock auctioneers(*y*). Section 1 of the Markets and Fairs (Weighing of Cattle) Act, 1926(*z*), provides that an auctioneer may not offer for sale for immediate slaughter any bull, cow, ox or heifer unless it has been weighed on the weighing machine and its weight as so ascertained is disclosed to intending purchasers at the time of the offer for sale, either by announcement made by the auctioneer or in some other manner calculated to bring it to their notice.

(*w*) See sect. 271, Public Health Act, 1936 ; 29 Halsbury's Statutes 497 ; incorporated with the Food and Drugs Act, 1938, by sect. 96.

(*x*) *M'Intosh v. Romford L. B.* (1889), 61 L.T. 185 ; 33 Digest 538, 150.

(*y*) *Knott v. Stride* (1913), 77 J.P. 222 ; 33 Digest 538, 151.

(*z*) 11 Halsbury's Statutes 484.

Weighing of articles and of vehicles with their loads.—The requirements of section 52 of the Act of 1938, *infra*, apply to the weighing of articles offered for sale in a market.

Section 52, Food and Drugs Act, 1938.—Provisions as to the weighing of articles and of vehicles with their loads and after discharge.

- (1) A person selling, or offering for sale, any articles in the market shall, if required so to do by the buyer, cause them to be weighed or measured by the scales and weights or measures provided by the market authority and, if he refuses so to do, shall be liable to a fine not exceeding forty shillings.
- (2) The person in charge of any vehicle in which articles are brought for sale in the market shall, on the request of the buyer or seller of the articles, or his agent, take the vehicle with its load to the nearest weighing machine provided by the market authority in connection with the market and permit it to be weighed and, after its load has been discharged, shall, on such request as aforesaid, take it to the weighing machine so provided which is nearest to the place of discharge, and permit it to be reweighed without its load.
- (3) If the person in charge of any such vehicle as aforesaid refuses to comply with the provisions of the last preceding subsection, or refuses to assist in the weighing of the vehicle, he shall be liable to a fine not exceeding forty shillings.

As to the weighing of cattle at livestock markets (see *ante*, p. 477), see section 21, Livestock Industry Act, 1937(*a*), and the Markets and Fairs (Delegation of Functions relating to Weighing of Cattle) Order, 1938(*b*), which delegated the functions of the Minister of Agriculture and Fisheries to the Livestock Commission(*c*) ; the Commission is suspended during the war emergency(*d*).

Information as to weights and number of animals and goods brought to a market.—The person in charge of any vehicle in which, and any other person by whom, animals, poultry or other articles are brought for sale in a market, must give to any authorised market officer such information as to their number and kind or, in the case of articles on which tolls are chargeable by reference to weight, as to their weight, as that officer may require(*e*). Any person who gives false information regarding any animal or goods brought to a market for sale is liable to a penalty in accordance with section 55(*b*) of the Act of 1938, *infra*. If an officer appointed by a market authority to attend to the weighing or measuring of articles sold in the market, or of vehicles bringing articles for sale in the market, or of animals brought for sale therein, refuses or

(a) 30 Halsbury's Statutes 19.

(b) S.R. and O., 1938, No. 1597.

(c) See sect. 1, Livestock Industry Act, 1937 ; 30 Halsbury's Statutes 6.

(d) S.R. and O., 1939, No. 1303.

(e) Sect. 53, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 286.

neglects on demand to perform such duties, he is liable to a penalty(*f*).

A penalty is incurred if any person commits a fraud in connection with any animals or articles brought to a market, in accordance with section 55 of the Act of 1938, *infra*.

Section 55, Food and Drugs Act, 1938.—Frauds in connection with weighing, or with tolls, etc.

A person who—

- (a) commits any fraud with respect to the weighing or measuring of any article, or the weighing of any vehicle, whether loaded or unloaded, or the weighing of any animal, for the purposes of the foregoing provisions of this Part of this Act, or with respect to the recording of the weight of any article or of any vehicle or its load, or of any animal; or
- (b) with intent to evade payment of the whole or a part of any toll or other charge, gives to an authorised market officer false information as to the number, kind or weight of any animals, poultry or other articles,

shall be liable to a fine not exceeding twenty pounds, or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment.

MARKET BYELAWS.

Powers of local authority.—Any local authority who maintain a market, whether they are a market authority or not, may make byelaws for—

- 1—regulating the use of the market place and the buildings, stalls, pens and standings therein;
- 2—preventing nuisances or obstructions in the market place or in the immediate approaches thereto; and
- 3—regulating porters and carriers resorting to the market, and fixing the charges to be made for carrying articles therefrom within the district(*g*).

It should be noted that the power to make market byelaws extends to all local authorities (see *ante*, p. 18) and is not restricted to market authorities. Consequently an authority owning a franchise market or a market established under a local Act, are entitled to make byelaws under section 56, *supra*.

Provisions with respect to the making of byelaws are contained in section 250 of the Local Government Act, 1933(*h*), and any market byelaws are subject to confirmation by the Minister of Health(*i*). The Ministry of Health have issued a Model Series of Byelaws with respect to markets(*k*).

(*f*) *Ibid*, sect. 54; 31 Halsbury's Statutes 286.

(*g*) *Ibid*, sect. 56; 31 Halsbury's Statutes 286.

(*h*) 26 Halsbury's Statutes 440.

(*i*) Sect. 91, Food and Drugs Act, 1938; 31 Halsbury's Statutes 308; and see *ante*, p. 3.

(*k*) Ministry of Health, Model Byelaws Series V, H.M.S.O.

It has been held that a byelaw which prohibited the sale of cattle by auction in the market place before a fixed hour is valid(*l*). It has also been held that a byelaw which set apart different places for carrying on wholesale and retail trades was reasonable and not in restraint of trade(*m*). In a further case(*n*) a byelaw which prevented the introduction into the market place, without the consent of the officer in charge, of a class of articles which came within the classes for which the market had been established, was invalid as being in restraint of trade. Similarly, a byelaw prohibiting all sales by auction except with the consent of the market superintendent or other authorised officer has been held to be invalid(*o*).

In order to facilitate the examination by a veterinary inspector of pigs entering a market, a local authority may make regulations governing the mode and time of such entry(*p*).

MARKETS OF THE WOOLWICH BOROUGH COUNCIL.

No repeal effected by the Act of 1938 affects any rights, duties or privileges vested in, or imposed on, the council of the Metropolitan Borough of Woolwich in relation to their markets(*q*). Unlike other London boroughs, the markets carried on by the Woolwich Borough Council are subject to the Public Health Act code, which is repealed by the Act of 1938, and as the provisions of Part V of that Act relating to markets do not apply to London(*r*) it was necessary to preserve the existing rights of the Woolwich Borough Council.

COLD-AIR STORES AND REFRIGERATORS.

Section 62 of the Act of 1938, *infra*, empowers a local authority who have provided a public slaughterhouse (see *ante*, p. 272) or a market (see *ante*, p. 473) to provide a cold-air store or refrigerator for the storage and preservation of meat and other articles of food.

Section 62, Food and Drugs Act, 1938.—Establishment by local authority of cold-air stores and refrigerators.

- (1) A local authority who have provided, or are about to provide, a public slaughterhouse, or a market, may, with the approval of the Minister, provide a cold-air store or refrigerator for the storage and preservation of meat and other articles of food, and may make charges in respect of the use of any such store or refrigerator :

(*l*) *Collins v. Wells Corp'n.* (1885), 1 T.L.R. 328 ; 33 Digest 537, 143.

(*m*) *Strike v. Collins* (1886), 50 J.P. 741 ; 33 Digest 538, 145.

(*n*) *Wortley v. Nottingham L. B.* (1869), 21 L.T. 582 ; 33 Digest 532, 93.

(*o*) *Nicholls v. Tavistock U.D.C.*, [1923] 2 Ch. 18 ; 33 Digest 529, 60.

(*p*) Art. 18, Swine Fever Order, 1938 ; S.R. and O., 1938, No. 203 ; and see *post*, p. 532.

(*q*) Sect. 99, Food and Drugs Act, 1938 ; 31 Halsbury's Statutes 312.

(*r*) See *ibid*, sect. 103(2) ; 31 Halsbury's Statutes 318.

Provided that any proposal to provide under this section a cold-air store or refrigerator within the district of another local authority shall require the consent of that authority, but such consent shall not be unreasonably withheld, and any question whether or not consent is unreasonably withheld shall be referred to and determined by the Minister.

- (2) A local authority who intend to apply for the approval of the Minister under this section shall, one month at least before making the application, give notice of their intention by advertisement in one or more local newspapers circulating in their district, and, where the consent of the local authority of another district is required, in one or more local newspapers circulating in that district, and the Minister shall consider any objection to the authority's proposals which he may receive within four weeks after the publication of the advertisement from any person appearing to him to be interested, and, in the event of any such objection being received and not withdrawn, shall cause a local inquiry to be held.

As to the responsibility of a local authority for goods deposited in a cold-air store, see *Economic Stores (Halifax) v. Halifax Corporation(s)*.

EMERGENCY PROVISIONS.

The Minister of Agriculture and Fisheries may by special order prohibit the holding of a market, fair, mart or other sale of livestock(*t*), but this does not prevent the operation of any collecting centre authorised by the Minister of Food for the collection or sale and slaughter of livestock for the purpose of the Livestock (Sales) Order, 1940(*u*), or any movement of livestock to such centre, or any sale or slaughter thereat. The power to make such an order has been delegated by the Minister to war agricultural executive committees, subject to any order being approved by the Minister, except in the event of interruption of communications due to hostilities(*v*).

(s) (1923), 87 J.P. 77 ; 38 Digest 223, 550.

(t) Livestock Markets (Suspension) Order, 1942 ; S.R. and O., 1942, No. 823, Art. 2.

(u) S.R. and O., 1940, No. 40.

(v) Livestock Markets (Suspension) Order, 1942 ; S.R. and O., 1942, No. 823, Art. 4.

PART VI.

MISCELLANEOUS.

CHAPTER 21.

DISEASES OF ANIMALS.

INTRODUCTION.

The law relating to diseases of animals is administered partly by officers of the Ministry of Agriculture and Fisheries and partly by local authorities (see *infra*). In this chapter, unless otherwise stated, the term "Minister" means the Minister of Agriculture and Fisheries, and the term "Ministry" the Ministry of Agriculture and Fisheries.

The Diseases of Animals Act, 1894—the principal Act—and the Acts amending it, deal generally with the following matters—

- 1—prevention of scheduled diseases of animals (see *post*, p. 487) and their eradication ;
- 2—control of outbreaks of diseases of animals ;
- 3—prevention of the introduction of diseases of animals from abroad ; and
- 4—protection of animals against unnecessary suffering.

The volume of law, including Statutory Rules and Orders, relating to diseases of animals, is considerable, and in this chapter it will only be possible to summarise generally the legal and administrative procedure involved.

FUNCTIONS OF MINISTRY OF AGRICULTURE AND FISHERIES.

As the Government Department responsible for the administration of the Diseases of Animals Acts and Orders the Ministry of Agriculture and Fisheries have certain powers and duties, including—

- 1—Slaughter of animals affected with cattle plague(*a*) ; pleuropneumonia(*b*) ; foot-and-mouth disease(*c*) ; and swine fever(*d*) ; and payment of compensation in respect thereof ;
- 2—Making, varying and repealing orders relating to diseases of animals(*e*) ;

(*a*) Sect. 7, Diseases of Animals Act, 1894 ; 1 Halsbury's Statutes 393.

(*b*) *Ibid*, sect. 14 ; 1 Halsbury's Statutes 395.

(*c*) *Ibid*, sect. 15 ; *ibid*, 396. (*d*) *Ibid*, sect. 16 ; *ibid*.

(*e*) *Ibid*, sect. 10 ; 1 Halsbury's Statutes 394 ; as amended by sect. 1, Diseases of Animals Act, 1927 ; 1 Halsbury's Statutes 439 ; as to Diseases of Animals Orders generally, see *post*, p. 499.

- 3—Slaughter of animals (including poultry(*f*)) suspected of being affected with any disease or of animals exposed to the infection of any such disease, as specified by order made by the Minister(*g*) ;
- 4—Power to reserve for observation and treatment an animal liable to be slaughtered under the Diseases of Animals Acts or Orders(*h*).
- 5—Making orders respecting animals affected with pleuro-pneumonia or foot-and-mouth disease or contacts of such animals, exposed for sale in markets, fairs, sale-yards, places of exhibition or other places ; in transit or in course of being moved by land or water ; in a foreign animals' wharf or quarantine station ; in a slaughterhouse ; on common or unenclosed land ; and generally, while being in a place not in the possession or occupation of the owner of the animals(*i*).
- 6—Making orders with respect to imported animals, fodder, litter, dung, etc.(*k*) ;
- 7—Making orders allowing the landing of foreign animals intended for exhibition or other exceptional purposes, subject to retention in quarantine(*l*) ;
- 8—Making orders regulating ports at which foreign animals are landed(*m*) ;
- 9—Slaughter of imported animals in certain cases(*n*) ; and
- 10—Making orders declaring areas to be eradication or attested areas, and prohibiting or regulating the movement of cattle into, out or within such area(*o*).

SCHEDULED DISEASES OF ANIMALS.

The diseases to which the Diseases of Animals Acts apply are as follows :—

Cattle plague (*i.e.* rinderpest) (see *post*, p. 507) ;

Contagious pleuro-pneumonia of cattle (see *post*, p. 521) ;

Foot-and-mouth disease (see *post*, p. 509) ;

Sheep-pox (see *post*, p. 523) ;

Sheep-scab (see *post*, p. 524) ;

Swine fever (*i.e.* typhoid fever of swine, soldier purples, red disease, hog cholera or swine plague)(*p*) (see *post*, p. 528).

The Minister is empowered to make Orders for extending, for all or any of the purposes of the Diseases of Animals Acts,

(*f*) See sect. 3, Diseases of Animals Act, 1935 ; 28 Halsbury's Statutes 9.

(*g*) See sect. 22, Agriculture Act, 1937 ; 30 Halsbury's Statutes 63.

(*h*) Sect. 20, Diseases of Animals Act, 1894 ; 1 Halsbury's Statutes 398.

(*i*) *Ibid*, sect. 21 ; *ibid*, 399. (*k*) *Ibid*, sect. 25 ; *ibid*, 404.

(*l*) *Ibid*, sect. 27 ; 1 Halsbury's Statutes 404 ; as to quarantine, see Schedule III, Part II ; 1 Halsbury's Statutes 423.

(*m*) *Ibid*, sect. 30 ; 1 Halsbury's Statutes 405.

(*n*) *Ibid*, sect. 24 ; 1 Halsbury's Statutes 403, as amended by sect. 1, Diseases of Animals Act, 1896 ; 1 Halsbury's Statutes 424 ; as to slaughter, see Schedule III, Part I ; 1 Halsbury's Statutes 423.

(*o*) Sect. 23 Agriculture Act, 1937 ; 30 Halsbury's Statutes 63.

(*p*) Sect. 59(1), Diseases of Animals Act, 1894 ; 1 Halsbury's Statutes 420.

the definition of "disease," so that the provisions of the Acts or any of them, shall apply to such diseases in addition to those mentioned in the Act 1894, *supra*(*q*). In accordance with this power the following diseases have become subject to the provisions of the Diseases of Animals Acts, and appropriate Orders :—

Anthrax (see *post*, p. 502) ;
 Epizootic abortion (see *post*, p. 508) ;
 Epizootic lymphangitis (see *post*, p. 508) ;
 Glanders (see *post*, p. 518) ;
 Parasitic mange (see *post*, p. 519) ;
 Rabies (see *post*, p. 522) ;
 Tuberculosis (see *post*, p. 532) ;
 Brucellosis melitensis (see *post*, p. 507).

The Diseases of Animals Acts have been extended to poultry(*r*) and the expression "disease" in relation to poultry means—

Fowl-pest in any of its forms, including Newcastle diseases and fowl-plague(*s*) (see *post*, p. 515).

Definition of "animals."—The expression "animals" means—

Cattle, sheep and goats, and all other ruminating animals and swine, except where otherwise expressed(*t*).

This definition may be extended by Order made by the Minister for all or any of the purposes of the Diseases of Animals Acts, so as to comprise any kind of four-footed beasts(*u*), and Orders have been made with respect to horses, asses, mules, dogs and cats. The expression "cattle" means bulls, cows, oxen, heifers and calves(*t*). The expression "carcase" means the carcase of an animal, and includes part of a carcase, and the meat, bones, hide, skin, hoofs, offal or other part of an animal, separately or otherwise, or any portion thereof; the expression "fodder" means hay or other substance commonly used for food of animals; and the expression "litter" means straw or other substance commonly used for bedding or otherwise for or about animals(*v*).

AUTHORITIES FOR THE ADMINISTRATION OF THE DISEASES OF ANIMALS ACTS.

The local authorities responsible for the enforcement and administration of the Diseases of Animals Acts are as follows :—

(*q*) Sect. 22(*xxxv*), Diseases of Animals Act, 1894; 1 Halsbury's Statutes 402.

(*r*) Sect. 1(1), Diseases of Animals Act, 1935; 28 Halsbury's Statutes 8.

(*s*) *Ibid*, sect. 1(2); 28 Halsbury's Statutes 8.

(*t*) Sect. 59(1), Diseases of Animals Act, 1894; 1 Halsbury's Statutes 420.

(*u*) *Ibid*, sect. 22(*xxxvi*); 1 Halsbury's Statutes 402.

(*v*) *Ibid*, sect. 59(1); 1 Halsbury's Statutes 420.

- 1—*Borough councils*, which contained, according to the census of 1881, a population of not less than 10,000 ;
- 2—*County councils*, except in the case of borough councils as defined above ;
- 3—*City of London*, within the City itself, and with respect to foreign animals, within the whole of the City and County of London ; and
- 4—*London County Council*, in the county of London exclusive of the City, and except the provisions relating to imported animals(*w*).

Every local authority is required to appoint a committee or committees to whom it may delegate its powers under the Diseases of Animals Acts, except as otherwise provided by Order of the Minister, and except the power to make a rate. The fact that an authority have delegated their powers under the Diseases of Animals Acts to a committee does not mean that they are debarred from exercising any of such powers themselves(*x*). Such a committee may consist of members of the local authority or partly of such members and partly of other persons, being rated occupiers in the district of the local authority. The authority may appoint one committee as their executive committee to whom the powers of the local authority, except the power to make a rate, may be delegated. Such executive committee may appoint sub-committees and delegate any of its powers to them(*y*). As to the appointment of committees and sub-committees generally, see *ante*, p. 29.

An agricultural committee *must* be appointed by all county councils, except London, and *may* be established by a county borough council, and in all such cases the agricultural committee must appoint a diseases of animals sub-committee, which acts as the executive committee (see *supra*) under the Act of 1894(*z*).

Provision is made in the Act of 1894(*a*) for one local authority to surrender its powers to another authority if the administration of the Act may be carried out more conveniently, and two or more authorities may form a joint committee for the administration of their powers relating to diseases of animals(*b*). Any arrangement of this sort must be approved by the Minister.

(*w*) *Ibid*, sect. 3 ; 1 Halsbury's Statutes 392.

(*x*) *Huth v. Clarke* (1890), 25 Q.B.D. 391 ; 33 Digest 17, 68.

(*y*) Sect. 31 and Sched. 5, Diseases of Animals Act, 1894 ; 1 Halsbury's Statutes, 406, 423.

(*z*) Sect. 8(2), Ministry of Agriculture and Fisheries Act, 1919 ; 3 Halsbury's Statutes 454.

(*a*) Sect. 39, Diseases of Animals Act, 1894 ; 1 Halsbury's Statutes 409.

(*b*) As to Joint Boards, see *ante*, p. 30.

FUNCTIONS OF LOCAL AUTHORITIES.

Local authorities charged with the enforcement of the Diseases of Animals Acts (see *supra*) have certain powers and duties, including—

- 1—Provision of wharves, stations, lairs, sheds and other places for the landing, reception, keeping, sale, slaughter or disposal of foreign or other animals, carcasses, fodder, litter, dung and other things(c) ;
- 2—Purchase, rent or lease land for wharves, etc., and for use for the burial of carcasses(d) ;
- 3—Making regulations in accordance with paragraph (xxxiv) of section 22 of the Act of 1894 (see *post*, p. 501) ;
- 4—Enforcement of provisions of various Diseases of Animals Orders (see *post*, pp. 499 *et seq*) ;
- 5—Power to borrow money for the purposes of the execution and enforcement of the Diseases of Animals Acts and Orders, where the amount required in any one year exceeds a rate of sixpence in the pound(e) ; and
- 6—Pay to veterinary practitioners a fee of 2s. 6d. for every notification of disease made by them to the local authority(f).

The powers of local authorities with regard to diseases of animals are confined to their own districts, unless otherwise expressly stated(g).

Defaulting local authorities.—Where a local authority fails to carry out duties under the Diseases of Animals Acts and Orders the Minister may, by order, empower a person therein named to do so, and may recover the costs incurred from the defaulting local authority(h).

OFFICERS OF DISEASES OF ANIMALS ACTS
AUTHORITIES.

Appointment.—Every local authority must appoint as many inspectors and other officers as they consider necessary for the execution and enforcement of the Diseases of Animals Acts and Orders and they were required to appoint at least one veterinary inspector and such additional veterinary inspectors as the Minister directed(i). A “veterinary inspector” means an inspector being a member of the Royal College of Veterinary Surgeons, or any veterinary practitioner qualified as approved by the Minister(k). As from the 1st April, 1938(l),

(c) Sect. 32(1), Diseases of Animals Act, 1894 ; 1 Halsbury's Statutes 406.

(d) *Ibid*, sect. 33 ; 1 Halsbury's Statutes 407.

(e) *Ibid*, sect. 42 ; 1 Halsbury's Statutes 411.

(f) Sect. 1, Diseases of Animals Act, 1909 ; 1 Halsbury's Statutes 425.

(g) Sect. 38, Diseases of Animals Act, 1894 ; 1 Halsbury's Statutes 409.

(h) *Ibid*, sect. 34 ; 1 Halsbury's Statutes 408.

(i) *Ibid*, sect. 35 ; 1 Halsbury's Statutes 408.

(k) *Ibid*, sect. 59(1) ; 1 Halsbury's Statutes 420.

(l) See S.R. and O., 1938, No. 506.

however, the functions of veterinary inspectors under the Diseases of Animals Acts were transferred to veterinary inspectors appointed by the Minister and from that date the duty of local authorities to appoint veterinary inspectors for the purposes of the Diseases of Animals Acts ceased^(m). References to the veterinary inspector of a local authority in the Diseases of Animals Acts and Orders are construed as references to a veterinary inspector appointed by the Minister⁽ⁿ⁾. The veterinary staff of the Ministry is organised as the Animal Health Division, and a Divisional Veterinary Inspector is usually employed in each administrative county. The Ministry's Inspectors work in close contact with the inspectors of local authorities^(o).

It is not necessary when instituting proceedings under the Diseases of Animals Acts or Orders to prove the appointment or handwriting of an inspector or other officer of the Ministry or of the clerk or an inspector or other officer of a local authority^(p). By virtue of the Documentary Evidence Acts, 1868 to 1895^(q), *prima facie* evidence of any order, regulation or document issued by the Ministry may be given in all courts of justice and in all legal proceedings whatever: either—

- 1—by the production of a copy of the London or Edinburgh Gazette purporting to contain such order, regulation or document ;
- 2—by the production of a copy of such order, regulation or document, purporting to be printed by the Government printer or under the superintendence or authority of His Majesty's Stationery Office ; or
- 3—by the production of a copy or extract purporting to be certified to be true by the Minister or the Secretary to the Ministry, or any person authorised by the Minister to act on behalf of the Secretary. No proof is required of the handwriting or official position of any person certifying to the truth of the copy or extract.

Inspectors appointed under the Diseases of Animals Acts, not being veterinary inspectors, are frequently police officers, but in some areas sanitary inspectors or officers of the public control department may act as inspectors under the Acts.

Powers and duties.—It is the duty of the police force of each police area to execute and enforce the Diseases of Animals

^(m) Sect. 19(1), Agriculture Act, 1937 ; 30 Halsbury's Statutes 61.

⁽ⁿ⁾ Animals (Miscellaneous Provisions) Order, 1938 ; S.R. and O., 1938, No. 197.

^(o) As to officers of local authorities generally, see Chapter 3, *ante*, p. 33.

^(p) Sect. 48(1), Diseases of Animals Act, 1894 ; 1 Halsbury's Statutes

414.

^(q) 8 Halsbury's Statutes 230, 247.

Acts and every Order made by the Minister, in accordance with section 43 of the Act of 1894, *infra*.

Section 43, Diseases of Animals Act, 1894.—Duties and authorities of constables.

- (1) The police force of each police area shall execute and enforce this Act and every order of the Board of Agriculture.
- (2) Where a person is seen or found committing, or is reasonably suspected of being engaged in committing, an offence against this Act, a constable may, without warrant, stop and detain him; and, if his name and address are not known to the constable, and such person fails to give them to the satisfaction of the constable, the constable may, without warrant, apprehend him; and the constable may, whether so stopping or detaining or apprehending the person or not, stop, detain and examine any animal, vehicle, boat or thing to which the offence or suspected offence relates, and require the same to be forthwith taken back to or into any place or district wherefrom or whereout it was unlawfully removed and execute and enforce that requisition.
- (3) If any person obstructs or impedes or assists to obstruct or impede a constable or other officer in the execution of this Act or of an order of the Board or of a regulation of a local authority, the constable or officer may without warrant apprehend the offender.
- (4) A person apprehended under this section shall be taken with all practicable speed before a justice, and shall not be detained without a warrant longer than is necessary for that purpose; and all enactments relating to the release of persons on recognisances taken by an officer of police or a constable shall apply in the case of a person apprehended under this section.
- (5) The foregoing provisions of this section respecting a constable extend and apply to any person called by a constable to his assistance.
- (6) A constable shall forthwith make a report in writing to his superior officer of every case in which he stops any person, animal, vehicle, boat or thing under this section, and of his proceedings consequent thereon.
- (7) Nothing in this section shall take away or abridge any power or authority that a constable would have if this section had not been enacted.

Where a police constable receives notice of an animal suffering from a scheduled disease in accordance with section 4 of the Act of 1894 he must forthwith give information thereof to such person or authority as the Minister may by general order direct(r). Instructions as to the notification of disease are contained in the various Diseases of Animals Orders, as to which see *post*, pp. 499 *et seq*.

An inspector of a local authority and a veterinary inspector of the Ministry have, for the purposes of the Diseases of Animals Acts, all the powers of a constable, as detailed in section 43, *supra*, in the place where such inspector is acting,

(r) Sect. 4(2), Diseases of Animals Act, 1894; 1 Halsbury's Statutes 393.

in accordance with the general powers of inspectors contained in section 44, *infra*.

Section 44, Diseases of Animals Act, 1894.—General powers of inspectors.

- (1) An inspector shall have, for the purposes of this Act, all the powers which a constable has under this Act or otherwise, in the place where the inspector is acting.
- (2) An inspector may at any time enter any land or shed to which this Act applies, or other building or place wherein he has reasonable grounds for supposing—
 - (a) that disease exists or has within fifty-six days existed ; or
 - (b) that the carcase of a diseased or suspected animal is or has been kept, or has been buried, destroyed or otherwise disposed of ; or
 - (c) that there is to be found any pen, place, vehicle, or thing in respect whereof any person has on any occasion failed to comply with the provisions of this Act, or of an order of the Board of Agriculture, or of a regulation of a local authority ; or
 - (d) that this Act or an order of the Board or a regulation of a local authority has not been or is not being complied with.
- (3) An inspector may at any time enter any pen, vehicle, vessel or boat in which or in respect whereof he has reasonable grounds for supposing that this Act or an order of the Board or a regulation of a local authority has not been or is not being complied with.
- (4) An inspector entering, as hereinbefore by this section authorised, shall, if required by the owner, or occupier, or person in charge of the land, building, place, pen, vehicle, vessel or boat, state in writing his reasons for entering.
- (5) A certificate of a veterinary inspector to the effect that an animal is or was affected with a disease specified in the certificate shall for the purposes of this Act be conclusive evidence in all courts of justice of the matter certified.
- (6) An inspector of the Board shall have all the powers of an inspector throughout England or that part thereof for which he is appointed, and in addition to the powers hereinbefore conferred upon inspectors, an inspector of the Board may at any time for the purpose of ascertaining whether pleuropneumonia, foot-and-mouth disease or swine-fever exists, or has within fifty-six days existed, in any shed, land or other place, enter such shed, land or place.

Reports.—Local authorities and their inspectors must send to the Ministry such notices, reports, returns and information as they may require(s).

Negligence of officer.—If the Minister is satisfied, on inquiry, that an inspector of a local authority is incompetent, or has been guilty of misconduct or neglect, he may, if he thinks fit, direct his removal and thereupon he shall cease to

be an inspector(*t*). Where an inspector is negligent in respect of duties imposed upon him by the Diseases of Animals Acts or Orders, the local authority are not liable in respect thereof(*u*), although the authority might be liable in damages for the negligence of an inspector in respect of duties imposed on the authority and delegated by them to their officer(*v*).

Obstruction of officer.—A person is guilty of an offence under the Diseases of Animals Acts (see *infra*) if he obstructs the entry of an inspector to any land, building, place, vessel, pen, vehicle or boat which the officer is entitled to enter or examine, or otherwise obstructs or impedes an inspector, officer or police constable(*w*).

OFFENCES AND LEGAL PROCEEDINGS.

The general offences against the Diseases of Animals Acts and Orders are set out in section 52 of the Act of 1894, *infra*.

Section 52, Diseases of Animals Act, 1894.—General offences.

If any person, without lawful authority or excuse, proof whereof shall lie on him, does any of the following things, he shall be guilty of an offence against this Act :—

- (i) if he does anything in contravention of this Act, or of an order of the Board of Agriculture, or of a regulation of a local authority ; or
- (ii) if, where required by this Act or by an order of the Board to keep an animal separate as far as practicable, or to give notice of disease with all practicable speed, he fails to do so ; or
- (iii) if he fails to give, produce, observe or do any notice, licence, rule or thing which by this Act, or by an order of the Board, or by a regulation of a local authority, he is required to give, produce, observe, or do ; or
- (iv) if he does anything which by this Act or an order of the Board is made or declared to be not lawful ; or
- (v) if he does or omits anything, the doing or omission whereof is declared by this Act or by an order of the Board to be an offence by him against this Act ; or
- (vi) if he refuses to an inspector or other officer, acting in execution of this Act, or of an order of the Board, or of a regulation of a local authority, admission to any land, building, place, vessel, pen, vehicle or boat which the inspector or officer is entitled to enter or examine, or obstructs or impedes him in so entering or examining, or otherwise in any respect obstructs or impedes an inspector or constable or other officer in the execution of his duty, or assists in any such obstructing or impeding ; or

(*t*) Sect. 35(3), Diseases of Animals Act, 1894 ; 1 Halsbury's Statutes 408.

(*u*) *Stanbury v. Exeter Corp'n.*, [1905] 2 K.B. 838 ; 34 Digest 39, 156.

(*v*) See *Stanbury v. Exeter Corp'n.*, *supra* ; *Fisher v. Oldham Corp'n.*, [1930] 2 K.B. 364 ; Digest Supp. ; and *Ormerod v. Rochdale Corp'n.* (1898), 62 J.P. 153 ; 25 Digest 113, 362.

(*w*) Sect. 62(vi), Diseases of Animals Act, 1894 ; 1 Halsbury's Statutes 416.

- (vii) if he throws or places, or causes or suffers to be thrown or placed, into or in any river, stream, canal, navigation or other water, or into or in the sea within three miles of the shore, the carcase of an animal which has died of disease, or been slaughtered as diseased or suspected ;

and on a further conviction within a period of twelve months for a second or subsequent offence against the same sub-section of this section he shall be liable, in the discretion of the court, to be imprisoned for any term not exceeding one month, with or without hard labour, in lieu of the fine to which he is liable under this Act.

If a person is found guilty of an offence he is liable—

- (i) to a fine not exceeding £50 ;
- (ii) if the offence is committed with respect to more than ten animals, to a fine not exceeding five pounds for each animal ; or
- (iii) where the offence is committed in relation to carcases, fodder, litter, dung or other thing (exclusive of animals), to a fine not exceeding £10 in respect of every half ton in weight thereof after one half ton, in addition to the first fine of not exceeding £50(x).

Where a person is guilty of an offence specified in section 53, *infra*, the court may order imprisonment up to a term of two months instead of a fine.

Section 53, Diseases of Animals Act, 1894.—Imprisonment instead of fine for use of expired licences, digging up of carcases and other specified offences.

- (1) If any person does any of the following things he shall be guilty of an offence against this Act :—
 - (i) if, with intent to unlawfully evade this Act, or an order of the Board of Agriculture, or a regulation of a local authority, he does anything for which a licence is requisite under this Act, or an order of the Board or a regulation of a local authority, without having obtained a licence ; or
 - (ii) if, where a licence is requisite, having obtained a licence, he, with the like intent, does the thing licensed after the licence has expired ; or
 - (iii) if he uses or offers or attempts to use as such a licence an instrument not being a complete licence, or an instrument untruly purporting or appearing to be a licence, unless he shows to the satisfaction of the court that he did not know of that incompleteness or untruth, and that he could not with reasonable diligence have obtained knowledge thereof ; or
 - (iv) if, with intent to unlawfully evade this Act, or an order of the Board of Agriculture, or a regulation of a local authority, he alters, or falsely marks, or ante-dates, or counterfeits, or offers or utters, knowing the same to be altered, or falsely made, or ante-dated, or counterfeited, a licence, declaration, certificate or instrument made or issued, or purporting to be made or issued, under or for any purpose of this Act, or of an Order of the Board or of a regulation of a local authority ; or

(x) *Ibid*, sect. 51 ; substituted by sect. 5, Diseases of Animals Act, 1927;
1 Halsbury's Statutes 440.

- (v) if, for the purpose of obtaining a licence, certificate or instrument, he makes a declaration or statement, false in any material particular, unless he shows to the satisfaction of the court that he did not know of that falsity and that he could not with reasonable diligence have obtained knowledge thereof ; or
 - (vi) if he obtains or endeavours to obtain such a licence, certificate or instrument by means of a false pretence, unless he shows to the satisfaction of the court that he did not know of that falsity and that he could not with reasonable diligence have obtained knowledge thereof ;
 - (vii) if he grants or issues such a licence, certificate or instrument, being false in any date or other material particular, unless he shows to the satisfaction of the court that he did not know of that falsity, and that he could not with reasonable diligence have obtained knowledge thereof, or if he grants or issues such a licence, certificate or instrument, having, and knowing that he has, no lawful authority to grant or issue the same ; or
 - (viii) if, with intent to unlawfully evade or defeat this Act, or an Order of the Board, or a regulation of a local authority, he grants or issues an instrument being in form a licence, certificate or instrument made or issued under this Act or an order of the Board or a regulation of a local authority, for permitting or regulating the movement of a particular animal, or the doing of any other particular thing, but being issued in blank, that is to say, not being before the issue thereof is filled up as to specify any particular animal or thing ; or
 - (ix) if he uses or offers or attempts to use for any purpose of this Act, or of an order of the Board, or of a regulation of a local authority, an instrument so issued in blank, unless he shows to the satisfaction of the court that he did not know of its having been so issued in blank and that he could not with reasonable diligence have obtained knowledge thereof ; or
 - (x) if he by means of any fraud or false pretence obtains, or attempts to obtain, compensation from the Board or a local authority in respect of an animal slaughtered, or aids or abets any person in any such fraud or false pretence ; or
 - (xi) if, without lawful authority or excuse, proof whereof shall lie on him, he digs up, or causes to be dug up, a carcase buried under the direction of the Board or of a local authority or of a receiver of wreck ; or
 - (xii) if, where the Board has by order prohibited, absolutely or conditionally, the use for the carrying of animals, or for any purpose connected therewith, of a vessel, vehicle or pen, or other place, he, without lawful authority or excuse, proof whereof shall lie on him, does anything so prohibited.
- (2) And in every case in this section specified he shall be liable, on conviction, in the discretion of the court, to be imprisoned for any term not exceeding two months, with or without hard labour, in lieu of the fine to which he is liable under this Act.

Most of the Diseases of Animals Orders (see *post*, p. 499) prescribe the various persons to be held responsible for contraventions of the Orders.

Proceedings in respect of offences under the Diseases of Animals Acts and Orders are taken in a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts(y), and an information may be laid by any person, the right to institute proceedings not being confined to local authorities(z). Where a person is required to give notice of disease or suspected disease to a police constable, the onus of proof that such notice was given is on the person charged(a). Similarly, the task of proving that cleansing and disinfection has been carried out rests on the defendant(b).

Where a person is charged with an offence in respect of the disease or illness of an animal he is presumed to have known of the existence of the disease or illness, unless and until he shows to the satisfaction of the court that he had no such knowledge and could not with reasonable diligence have obtained that knowledge(c).

A certificate issued by a veterinary inspector to the effect that an animal is or was affected with a disease is conclusive evidence of the matter so certified(d).

IMPORTED ANIMALS.

With a view to preventing the spread of infection through the importation of animals infected with disease, the Diseases of Animals Acts contain provisions restricting the importation of foreign animals. The Minister may require the slaughter of such animals at the port of entry in certain cases(e), and he may make Orders regulating ports for the following purposes :—

- (i) for prescribing the ports at which alone foreign animals may be landed ;
- (ii) for defining the limits of ports for the purposes of this Act ;
- (iii) for defining parts of ports ;
- (iv) for prohibiting or regulating the movement of animals into, within or out of a defined part of a port ;
- (v) for prescribing and regulating the inspection and examination and the mode, time and conditions of slaughter of animals in a defined part of a port ;
- (vi) for prescribing and regulating the disposal of animals, not being foreign animals, and being in a defined part of a port ;

(y) Sect. 54, Diseases of Animals Act, 1894 ; 1 Halsbury's Statutes 418.

(z) *R. v. Stewart, Ex parte Burnham*, [1896] 1 Q.B. 300 ; 2 Digest 303, 708.

(a) *Huggins v. Ward* (1873), L.R. 8 Q.B. 521 ; 2 Digest 302, 704.

(b) Sect. 57(2), Diseases of Animals Act, 1894 ; 1 Halsbury's Statutes 419.

(c) *Ibid.*, sect. 57(1) ; 1 Halsbury's Statutes 419 ; as to onus of proof, see *Wilson v. Yates* (1927), 91 J.P. 188 ; Digest Supp.

(d) *Ibid.*, sect. 44(5) ; 1 Halsbury's Statutes 413.

(e) *Ibid.*, sect. 24 ; 1 Halsbury's Statutes 403 ; as amended by sect. 1, Diseases of Animals Act, 1896 ; 1 Halsbury's Statutes 424.

- (vii) for regulating the removal of carcasses, fodder, litter, utensils, dung or other things into, within or out of a defined part of a port, and the disposal thereof, when likely to introduce or spread disease ;
- (viii) for prescribing and regulating the cleansing and disinfection of a defined part of a port or of parts thereof ;
- (ix) for prescribing and regulating the disinfection or destruction of things being in a defined part of a port or removed there-out ;
- (x) for regulating the movement of persons into, within or out of a defined part of a port ;
- (xi) for prescribing and regulating the disinfection of the clothes of persons employed or being in a defined part of a port, and the use of precautions against the introduction or spreading by them of disease ;
- (xii) for prescribing and regulating the seizure and detention of any foreign animal, carcase, fodder, litter, dung, or other thing whereby disease may be introduced or spread ; and
- (xiii) generally, for the better execution of this Act in relation to foreign animals, carcasses, fodder, litter, dung or other things, or for the purpose of in any manner preventing the introduction or spreading thereby of disease(*f*).
- (xiv) for prohibiting the importation or bringing into Great Britain of poultry, or for regulating the importation or bringing into Great Britain of poultry, whether by defining quarantine stations for the reception of poultry and applying any of the provisions of Part II of the Third Schedule to the principal Act or otherwise ; and
- (xv) for prohibiting or regulating the importation or bringing into Great Britain of poultry eggs intended for hatching, or the use for hatching of poultry eggs imported or brought into Great Britain(*g*).

Orders have been made :—

- 1—prohibiting the importation of carcasses from European countries, with the exception of cured, preserved or treated articles(*h*) ;
- 2—prohibiting the importation of fodder or straw from certain countries(*i*) ;
- 3—requiring the destruction of containers in which raw tongues are imported from certain countries(*h*) ;
- 4—controlling packing-materials and meat-wrappings(*l*) ; and
- 5—controlling swill containing meat or bones(*m*).

(*f*) Sect. 30, Diseases of Animals Act, 1894 ; 1 Halsbury's Statutes 405.

(*g*) Sect. 4, Diseases of Animals Act, 1935 ; 28 Halsbury's Statutes 9.

(*h*) Importation of Carcasses (Prohibition) Orders, 1926, 1927, 1928 ; S.R. and O., 1926, Nos. 76, 78 ; S.R. and O., 1927, No. 112 ; and S.R. and O., 1928, No. 7.

(*i*) Foreign Hay and Straw Orders, 1912, 1913, 1937, 1938, 1939 and 1940 ; S.R. and O., 1912, Nos. 284, 1711 ; S.R. and O., 1913, No. 1154 ; S.R. and O., 1937, Nos. 5, 126, 794, 801 and 1153 ; S.R. and O., 1938, Nos. 9, 1142, 1398 and 1544 ; S.R. and O., 1939, Nos. 116 and 325 ; and S.R. and O., 1940, No. 303.

(*k*) Imported (Raw Tongues) Orders, 1913 ; S.R. and O., 1913, Nos. 449 and 1153.

(*l*) Importation of Meat (Wrapping Materials) Orders, 1932 and 1939 ; S.R. and O., 1932, No. 317 ; and S.R. and O., 1939, No. 1725 ; Foot and Mouth Disease (Packing Materials) Orders, 1925 and 1926 ; S.R. and O., 1925, No. 1178 ; and S.R. and O., 1926, No. 42.

(*m*) Foot and Mouth Disease (Boiling of Animal Foodstuffs) Orders, 1932 and 1940 ; S.R. and O., 1932, No. 803 ; and S.R. and O., 1940, No. 1795.

The importation of live animals from Canada and Ireland is regulated by the Importation of Animals Act, 1922(*n*), as amended by the Ottawa Agreements Act, 1932(*o*). The Minister is empowered by the Pedigree Animals Act, 1925(*p*), to issue Orders allowing the entry from the Dominions, where reciprocal arrangements are in force, of pedigree cattle, sheep, goats and swine.

The importation of horses, asses and mules is prohibited, except from Ireland, the Channel Islands or the Isle of Man, unless the animal is accompanied by a certificate from a veterinary inspector that it has passed the mallein test within ten days of shipment(*q*).

The importation of all canine and feline animals and hyaenas is controlled by licence issued by the Minister, except in the case of animals from Ireland, the Channel Islands and the Isle of Man(*r*). The importation of poultry and hatching-eggs is also controlled(*s*).

DISEASES OF ANIMALS ORDERS.

The detailed control of scheduled diseases of animals is carried out by means of Orders made by the Minister in accordance with the provisions of section 22 of the Act of 1894, *infra*.

Section 22, Diseases of Animals Act, 1894.—Power of Board of Agriculture to make orders for prevention or checking of disease and other purposes.

The Board of Agriculture may make such orders as they think fit, subject and according to the provisions of this Act, for the following purposes, or any of them :—

- (i) for prescribing and regulating the publication by placards, handbills or otherwise, in the immediate neighbourhood of a place or area declared infected, of the fact of such declaration ;
- (ii) for prohibiting or regulating the movement of animals and persons into, within or out of an infected place or area ;
- (iii) for prescribing and regulating the isolation or separation of animals being in an infected place or area ;
- (iv) for prohibiting or regulating the removal of carcasses, fodder, litter, utensils, pens, hurdles, dung or other things into, within or out of an infected place or area ;
- (v) for prescribing and regulating the destruction, burial, disposal or treatment of carcasses, fodder, litter, utensils, pens, hurdles, dung, or other things, being in an infected place or area, or removed thereout ;

(*n*) Sect. 2 ; 1 Halsbury's Statutes 431. (*o*) 25 Halsbury's Statutes 94.

(*p*) 1 Halsbury's Statutes 436, as amended by Diseases of Animals Act, 1935, Sched. II ; 28 Halsbury's Statutes 15.

(*q*) Importation of Horses, Asses and Mules (Great Britain) Order, 1938 ; S.R. and O., 1938, No. 272.

(*r*) Importation of Dogs and Cats Order, 1928 ; S.R. & O., 1928, No. 922.

(*s*) Poultry and Hatching Eggs (Importation) Order, 1936 ; S.R. and O., 1936, No. 1297.

- (vi) for prescribing and regulating the cleansing and disinfection of infected places and areas, or parts thereof ;
- (vii) for prescribing and regulating the disinfection of the clothes of persons coming in contact with or employed about diseased or suspected animals, or being in an infected place, and the use of precautions against the spreading of disease by such persons ;
- (viii) for prohibiting or regulating the digging up of carcasses which have been buried ;
- (ix) for prohibiting or regulating the exposure of diseased or suspected animals in markets or fairs or sale-yards or other public or private places, where animals are commonly exposed for sale, and the placing thereof in lairs or other places adjacent to or connected with markets or fairs, or where animals are commonly placed before exposure for sale ;
- (x) for prohibiting or regulating the sending or carrying of diseased or suspected animals, or of dung or other things likely to spread disease, or the causing the same to be sent or carried on railways, canals, rivers or inland navigations, or in coasting vessels or otherwise ;
- (xi) for prohibiting or regulating the carrying, leading or driving of diseased or suspected animals, or the causing them to be carried, led or driven on highways or thoroughfares or elsewhere ;
- (xii) for prohibiting or regulating the placing or keeping of diseased or suspected animals on commons or unenclosed lands, or in fields or other places insufficiently fenced or on the sides of highways ;
- (xiii) for prescribing and regulating the seizure, detention and disposal of a diseased or suspected animal exposed, carried, kept or otherwise dealt with in contravention of an order of the Board ; and for prescribing and regulating the liability of the owner or consignor or consignee of such animal to the expenses connected with the seizure, detention and disposal thereof ;
- (xiiia) for prescribing, regulating and securing the periodical treatment of all sheep by effective dipping, or by the use of some other remedy for sheep scab^(t) ;
- (xiv) for prescribing the mode of ascertainment of the value of an animal slaughtered, or liable to be slaughtered, by order of the Board or of a local authority ;
- (xv) for regulating applications for, and the mode of payment of, compensation to be paid out of money provided by Parliament ;
- (xvi) for prescribing and regulating the destruction, burial, disposal or treatment of carcasses of animals slaughtered by order of the Board or of a local authority, or dying while diseased or suspected ;
- (xvii) for prohibiting or regulating the movement of animals, and the removal of carcasses, fodder, litter, dung and other things, and for prescribing and regulating the isolation of animals newly purchased ;

(t) This purpose is added by the Diseases of Animals Act, 1903 ; 1 Halsbury's Statutes 424.

- (xviii) for prescribing and regulating the issue and production of licences respecting movement and removal of animals and things ;
- (xix) for prohibiting or regulating the holding of markets, fairs, exhibitions and sale of animals ;
- (xx) for prescribing and regulating the cleansing and disinfection of places used for the holding of markets, fairs, exhibitions or sales of animals or for lairage of animals and yards, sheds, stables and other places used for animals ;
- (xxi) for prescribing and regulating the cleansing and disinfection of vessels, vehicles and pens and other places used for the carrying of animals for hire or purposes connected therewith ;
- (xxii) for prescribing modes of cleansing and disinfection ;
- (xxiii) for prohibiting the conveyance of animals by any special vessel to or from any port in the United Kingdom for such time as the Board may consider expedient ;
- (xxiv) for insuring for animals carried by sea a proper supply of food and water and proper ventilation during the passage and on landing ;
- (xxv) for protecting them from unnecessary suffering during the passage and on landing ;
- (xxvi) for protecting animals from unnecessary suffering during inland transit ;
- (xxvii) for securing a proper supply of water and food to animals during any detention thereof ;
- (xxviii) for prescribing and regulating the marking of animals ;
- (xxix) for prohibiting, absolutely or conditionally, the use, for the carrying of animals or for any purpose connected therewith, of a vessel, vehicle or pen or other place in respect whereof, or of the use whereof, a penalty has been recovered from any person for an offence against this Act ;
- (xxx) for prescribing and regulating the muzzling of dogs and the keeping of dogs under control ;
- (xxxi) for prescribing and regulating the seizure, detention and disposal (including slaughter) of stray dogs and of dogs not muzzled, and of dogs not being kept under control, and the recovery from the owners of dogs of the expenses incurred in respect of their detention ;
- xxxii) for prescribing and regulating the payment and recovery of expenses in respect of animals ;
- (xxxiii) for prescribing and regulating the form and mode of service or delivery of notices and other instruments ;
- (xxxiv) for authorising a local authority to make regulations for any of the purposes of this Act or of an order of the Board subject to such conditions, if any, as the Board, for the purpose of securing uniformity and the due execution of the provisions of this Act, think fit to prescribe ;
- (xxxv) for extending, for all or any of the purposes of this Act, the definition of disease in this Act, so that the same shall for those purposes, or any of them, comprise any disease of animals in addition to the diseases mentioned in this Act ;

- (xxxvi) for extending, for all or any of the purposes of this Act, the definition of animals in this Act, so that the same shall for those purposes, or any of them comprise any kind of four-footed beasts, in addition to the animals mentioned in this Act ; and
- (xxxvii) generally, for the better execution of this Act, or for the purpose of in any manner preventing the spreading of disease.

There are a large number of Orders in force dealing with scheduled diseases, the details of the more important of which are summarised in the following pages. A "*Handbook of Acts and Orders Relating to Diseases of Animals*" is issued by H.M. Stationery Office(*tt*), and amendments in the form of Supplements to the Handbook are issued from time to time.

Anthrax Order, 1938(*u*).—The following description of anthrax has been issued by the Ministry(*v*) :—

Definition.—A contagious disease caused by a microbe—*Bacillus Anthracis*.

Animals affected.—Human beings and all animals are liable to anthrax. The disease is seen chiefly in cattle, pigs and sheep, but not uncommonly in horses.

Symptoms.—The disease shows itself suddenly, death usually resulting within 48 hours from the first onset of disease. It does not often in the United Kingdom spread with rapidity from animal to animal, but it may affect a number of swine at the same time if they have been fed on anthrax flesh or organs.

A beast which a short time before appeared to be well is found dead or in a dying condition. Frequently blood oozes from the nostrils and the anus. In cattle there are no typical symptoms, but in horses and pigs the region of the throat is often found to be swollen.

Post-mortem.—The carcase is swollen. Blood is found around the nostrils and anus. The muscles are often infiltrated with blood at certain points. The lungs and glands are congested. The spleen is very much enlarged ; it is softer and darker than normal, and its substance usually resembles tar.

In most parts of this country the enlargement of the spleen is of great diagnostic importance, but in those districts where red-water exists, enlargement of the spleen may be due to red-water. In this case, however, the spleen substance has not the same fluid tarry appearance. The flesh is dangerous to animals and human beings. It is the height of folly on the part of a farmer to open an animal suspected to have died of anthrax, as he may thereby cause further infection of his premises. In cases of sudden death he should await a skilled opinion before disposing of the carcase.

The provisions of the Anthrax Order, 1938, are as follows :—

Notice of Disease.—Notification of anthrax or suspected anthrax must be given to a police constable by the person having charge of the animal concerned ; and by a veterinary surgeon if he is of opinion that an animal examined by him is suffering from the disease.

(*tt*) Price 7s. 6d.

(*u*) S.R. and O., 1938, No. 204.

(*v*) "*Handbook of Acts and Orders relating to Diseases of Animals*," Ministry of Agriculture and Fisheries, 1937, H.M.S.O., as amended. Introduction.

The police constable must notify the veterinary inspector of the Ministry and the inspector under the Diseases of Animals Acts of the local authority. The latter must immediately report the matter to the local authority and to the medical officer of health.

Where the notice of disease relates to a carcase of an animal that has died or been slaughtered in the district of a local authority other than the local authority under the Acts, the latter must forthwith inform the local authority (Art. 1).

Precautions in case of diseased or suspected animal or carcase.—

The occupier of premises must prevent access of animals or poultry to a diseased or suspected animal or carcase or to any part of the premises which has been exposed to infection; and must detain on the premises the diseased or suspected animal, and all other cattle, sheep, goats or swine which have been in the same shed, stable, building, yard or field; and must disinfect as soon as possible with an approved disinfectant any place where the diseased or suspected animal or carcase has laid, or where its blood has escaped.

The skin of a diseased or suspected animal must not be cut nor may anything be done to cause the effusion of blood, except by a veterinary inspector.

The milk produced by a diseased or suspected cow or goat must not be mixed with other milk and must forthwith be boiled or otherwise sterilised, and any utensil in which such milk is placed before being so treated must be thoroughly sterilised (Art. 2).

Declaration of infected place.—An inspector of a local authority, upon becoming aware of the existence or suspected existence of anthrax, must immediately notify the veterinary inspector of the Ministry if that officer has not already been informed. The inspector must forthwith serve a notice (in the Form A set out in the Schedule to the Order) declaring and defining the infected place, on the occupier of the premises. Such premises then become subject to the Rules contained in Article 7 of the Order. The Notice remains in force until withdrawn by a further notice (in the Form B set out in the Schedule) (Art. 3).

Veterinary inquiry by Ministry.—The veterinary inspector of the Ministry must visit the premises, examine the animal or carcase concerned, and make all necessary inquiries regarding the disease. If, as a result of his examination, he is satisfied that the animal is not suffering from anthrax, he must forthwith give a certificate to that effect to the Ministry and the local authority, and the latter must immediately cause a Form B Notice to be served on the occupier of the premises. If the veterinary inspector is not satisfied that the animal is not suffering from anthrax, he must send a sample of blood or other fluid, or of the tissue of the carcase, as may be necessary, to the Ministry's laboratory at New Haw, Weybridge, Surrey, together with a report of his examination of the animal or carcase (Art. 4).

Precautions by local authority in case of suspected disease.—If the disease is confirmed, the Ministry must notify the local authority, who must forthwith proceed to cause the infected place to be disinfected and cleansed in accordance with Article 9 of the Order. When the local authority are satisfied that this has been satisfactorily completed, they must serve a Form B Notice. If the disease is not confirmed, a Form B Notice must be served forthwith (Art. 6)

Rules to be observed on an infected place.—The following Rules apply to infected places until a Form B Notice is served—

Rule 1—The occupier of the infected place shall :—

- (i) prevent access of animals or poultry to the diseased or suspected animal or carcase, or to any part of the premises which has or may have been exposed to infection of disease from the diseased or suspected animal or carcase, or has been contaminated by any dung or any discharge from any such animal or carcase ;
- (ii) detain on the premises any diseased or suspected animal or carcase thereon, and any other head of cattle, sheep, goat or swine which has been in the same shed, stable, building, yard or field with the diseased or suspected animal or carcase, or in any part of the premises contaminated by any dung or any discharge from any diseased or suspected animal or carcase ; and
- (iii) disinfect as soon as possible with an approved disinfectant any place where the diseased or suspected animal or carcase has lain, or where its blood has escaped.

Rule 2—The skin of a diseased or suspected carcase shall not be cut, nor shall anything be done to cause the effusion of blood, except by a veterinary inspector acting under the directions of the Minister, or by a veterinary surgeon acting on behalf of the owner of the carcase and in either case so far only as may be necessary for the purpose of obtaining suitable material for microscopical or cultural examination.

Rule 3—Animals shall not be removed, or allowed to stray, out of or into an infected place except as expressly authorised by Rules 4 and 5.

Rule 4—Any horse, ass, mule or dog which is not diseased or suspected may be moved out of or into an infected place.

Rule 5—Any other animal which is not diseased or suspected may be moved out of an infected place with the permission in writing of an inspector of the local authority to the nearest available slaughterhouse under the supervision of an inspector or other officer of the local authority for the purpose of being slaughtered forthwith, or to some premises to which the Rules contained in this Article shall thereupon be applied by the service of a Notice which shall be in the Form A set forth in the Schedule to this Order with the necessary adjustment. Such Notice shall remain in force until it is withdrawn by a Notice (Form B) under this Order served by an inspector of the local authority.

Rule 6—Litter, dung, broken fodder, utensils, pens, hurdles or other things shall not be removed from an infected place except with permission in writing from an inspector of the local authority.

Rule 7—The milk produced by any diseased or suspected cow or goat shall not be mixed with other milk, and shall forthwith be boiled or otherwise sterilised, and any utensil in which such milk is placed before being so treated shall be thoroughly sterilised with boiling water before any other milk is placed therein (Art. 7).

Disposal of carcasses.—A diseased carcass and any other carcass required to be destroyed by the Order must be disposed of by the local authority, at their expense, as follows :—

- (i) by exposure to a high temperature upon the farm or premises upon which the carcass is, or upon the nearest available premises suitable for the purpose ; or
- (ii) the carcass must be disinfected, and must then be taken to suitable premises and be there destroyed by exposure to a high temperature or by chemical agents ; or
- (iii) where the circumstances do not permit of either of the previous methods, the carcass must be buried as soon as possible in its skin in some convenient or suitable place to which animals will not have access, and which is removed from any dwelling-house, and at such a distance from any well or watercourse as will preclude any risk of contamination of the water, the carcass being buried at a depth of not less than 6 feet below the surface of the ground, and with a layer of lime not less than one foot deep both beneath and above it.

A diseased or suspected carcass may only be buried or destroyed by the local authority. Before removal for burial or destruction, all the natural openings of the carcass must be effectually plugged with tow or some suitable material soaked in an approved disinfectant (Art. 8).

Cleansing and disinfection.—The local authority, at their own expense, must cause to be cleansed and disinfected under the direction of an inspector—

- (a) all those parts of any shed, stable, building, field or other place in which a diseased animal has died or been slaughtered, or has been kept at the date of such death or slaughter ;
- (b) every utensil, pen, hurdle or other thing used for or about any diseased animal or carcass ;
- (c) every van, cart or other vehicle used for carrying any diseased animal or carcass on land otherwise than on a railway.

The cleansing and disinfection must be carried out in the following manner :—

- (i) the part of a place or thing must be thoroughly soaked or drenched with an approved disinfectant ; then
- (ii) the part of a place or thing must, if the nature thereof so permit, be scraped and, where necessary, swept, and the scrapings and sweepings and all dung, sawdust, litter and other matter must be effectually removed therefrom ; and
- (iii) the part of a place or thing must be thoroughly washed or scrubbed or scoured with water and then again thoroughly coated or washed with an approved disinfectant.

The scrapings and sweepings and the dung, sawdust, litter and other matter removed must forthwith be burnt or otherwise destroyed, or, if destruction is not practicable, be well mixed with quicklime and be effectually removed from contact with animals (Art. 9).

Facilities and assistance to be given for cleansing and disinfection.—

The occupier of premises to be cleansed and disinfected must give all reasonable assistance to the local authority. The authority may, by notice, require the occupier of premises to carry out the work of cleansing and disinfection but at the expense of the authority (Art. 10).

Prohibition from exposing or moving diseased or suspected animals or carcasses.—It is unlawful for any person—

- (a) to expose a diseased or suspected animal in a market, fair-ground, sale-yard, place of exhibition or other public or private place where animals are commonly exposed for sale or exhibition ; or
- (b) to place such animal in a lair or other place adjacent to or connected with a market, fairground or sale-yard, or where animals are commonly placed before or after exposure for sale or exhibition ; or
- (c) to send or carry, or cause to be sent or carried, a diseased or suspected animal or carcase by railway, canal, river or inland navigation, or in a coasting vessel ; or
- (d) to send, carry, lead or drive, or cause to be sent, carried, led or driven, a diseased or suspected animal or carcase on a highway, road or lane ; or
- (e) to place or keep a diseased or suspected animal on common or unenclosed land, or in a field or place insufficiently fenced, or in a field adjoining a highway, road or lane, unless that field is so fenced or situate that animals therein cannot in any manner come in contact with animals passing along that highway, road or lane or grazing on the side thereof ; or
- (f) to graze a diseased or suspected animal on pasture being on the sides of a highway, road or lane ; or
- (g) to allow a diseased or suspected animal to stray on a highway, road or lane or on the sides thereof, or to be on common or unenclosed land, or in a field or place insufficiently fenced.

A diseased or suspected animal or carcase dealt with in contravention of the above provisions must be detained and access of other animals or poultry to it must be prevented until it is certified as not suffering from anthrax. Such a diseased or suspected animal or carcase must be moved to a convenient and isolated place by or with the written permission of an inspector of the local authority, who must notify such action to the veterinary inspector of the Ministry. Any head of cattle, sheep, goat or swine which has been exposed to infection of anthrax must be detained and access of other animals to it prevented until an inspector of the local authority otherwise determines. The inspector concerned must cause an animal detained to be supplied with food and water, the cost of which may be recovered from the owner of the animal.

The market or other place where an animal suffering from anthrax was found must not be used for other animals until it has been cleansed and disinfected in the manner prescribed by Article 9, *supra* (Art. 11).

Copies of notices to be sent to Ministry.—An inspector of the local authority must send copies of all notices served by him under the Order to the Ministry of Agriculture and Fisheries, Whitehall Place, London, S.W.1, to the local authority, to the medical officer of health and to the police officer in charge of the nearest police station of the district (Art. 12).

Digging up.—It is unlawful to dig up, except under and in accordance with the provisions of a licence of the Minister or with the permission in writing of an inspector of the Ministry, the carcase of any animal that has been buried, whether under the Order or otherwise (Art. 13).

For the purposes of the Anthrax Order, the expression "*animals*" is extended so as to comprise horses, asses, mules, dogs and any four-footed mammal kept in captivity except mammals in a pathological institute which is specified in a licence for the time being in force granted to any person under the Cruelty of Animals Act, 1876, in addition to cattle, sheep, goats and all other ruminating animals and swine (Arts. 14 and 17). The expression "*poultry*" means domestic fowls, turkeys, geese, ducks, guinea-fowls and pigeons (Art. 17).

Brucellosis Melitensis Order, 1940^(w).—The provisions of this Order are as follows :—

Compulsory slaughter of diseased animals.—The Minister may cause to be slaughtered any animal suffering from or exposed to the infection of, brucellosis melitensis (Art. 1), and must pay compensation in respect thereof (Arts. 2 and 3).

Detention and isolation of animals and precautions to be adopted to prevent spread of infection.—A veterinary inspector may serve a detention notice on the owner of an animal affected or suspected of being affected with the disease, requiring the detention and isolation of the affected animal, and a copy of such notice must be sent to the local authority (Art. 4).

Cleansing and Disinfection.—A veterinary inspector may require the cleansing and disinfection of premises in which an animal affected with brucellosis melitensis has been kept and may serve written notice on the occupier thereof, specifying the work to be carried out. A copy of the notice must be sent to the local authority. The notice may specify that the cost of cleansing and disinfection will be borne either by the Minister or the occupier. On failure to carry out the work specified on the notice, the Minister may himself have the necessary work of cleansing and disinfection carried out and may recover the costs incurred from the person in default (Art. 6).

Cattle Plague Order, 1928^(x).—The following description of cattle plague has been issued by the Ministry^(y) :—

Definition.—A contagious and eruptive fever due to a specific filter-passing, ultra-microscopic virus.

Animals affected.—Bovines, rarely sheep, camels, certain wild ruminants and occasionally swine.

Symptoms.—The temperature rises in the early stages. The animal is off its feed, dull and the coat is staring. Sometimes shivering is noticed. The breathing is quick; a watery or mucous discharge flows from the eyes and nostrils; in the latter case there may be a slight amount of blood in the discharge. In milch cows the secretion of milk is diminished or arrested. The membrane of the nostrils is reddened and an eruption, like grains of bran, appears at the lower parts. This eruption is often followed by distinct ulceration which may appear in the nostrils, inside the lower lip and on the tongue. The bowels are at first constipated, but in the later stages diarrhoea often sets in. In that case the dung has a foul smell and is often tinged with blood. The animal falls away rapidly, and the disease usually has a fatal termination in from six to ten days.

(w) S.R. and O., 1940, No. 1251; as amended by S.R. and O., 1942, No. 143.

(x) S.R. and O., 1928, No. 206; as amended by Cattle Plague (Amendment) Order, 1938; S.R. and O., 1938, No. 194.

(y) See note (v), ante, p. 502.

It does not attack single animals in a herd but spreads rapidly from one to another.

Post-mortem.—The lungs are congested and often contain fluid. Congestion and ulceration of the fourth stomach are present. Congestion of the bowels, which gives place in the later stages to a greyish deposit on the mucous membrane and to ulceration, is also seen. The lymph glands are dark red in colour. The flesh is of a dark mahogany colour; it putrefies rapidly and should not be used for food. The carrying about of the flesh by dogs and birds helps to spread the disease.

The provisions of the Order of 1928, *supra*, are similar to those contained in other Diseases of Animals Orders, relating to notice of disease; declaration of infected place; veterinary inquiry; restrictions to operate immediately on certification of suspected case; rules to be observed on an infected place; removal of dung or other things; disinfection for cattle plague; prohibition of movement of animals exposed to infection; power to require isolation of animals; power to require housing or removal of animals; prohibition from exposing or moving animals affected with, or suspected of cattle plague; cattle plague found or suspected in a market, railway station or other like place, or during transit; seizure of animals and power of Minister to prevent spread of disease. As the disease is now considered to have been eradicated in Great Britain it is unnecessary to give the details of the Order of 1928.

Epizootic Abortion Order, 1922(z).—This Order does not make the disease notifiable but prohibits the exposure in markets, etc., of a cow or heifer which has calved prematurely within two months immediately preceding such exposure (Art. 2), nor may the owner of such a cow sell it without notifying the purchaser in writing that the animal has calved prematurely (Art. 3). Similarly a restriction is imposed on the sending out of such an animal to any bull for service (Art. 4). Such an animal may not be turned out on common or unfenced land or on grazing on a highway (Art. 5).

Epizootic Lymphangitis Order, 1938(a).—The following description of epizootic lymphangitis has been issued by the Ministry(b):—

Definition.—A contagious and eruptive disease caused by the *Cryptococcus Farciminosus*.

Animals affected.—Horses and mules. The ox is susceptible, but seldom takes the disease under natural conditions.

Symptoms.—The eruption appears on the legs, the neck, the head or any part of the body. Usually it starts near a wound through which the microbe has entered the tissues, but the ulcers often do not appear for months after the wound has healed. The lymph vessels in the skin stand out prominently and small hard

(z) S.R. and O., 1922, No. 806.

(a) S.R. and O., 1938, No. 193.

(b) See note (v), *ante*, p. 502.

nodules about the size of a hazel-nut appear on their course. These nodules suppurate and discharge a thick yellowish pus. Proud flesh grows from the wounds, the lymph vessels around become inflamed and the eruption gradually extends. A thick yellow scab may form over a patch of ulcers. The neighbouring glands are swollen and hard. The ulcers heal with difficulty, even under treatment, and they may break out again after an apparent cure has been effected.

The ulcers may appear inside the nostrils, but this is not so common as in the case of glanders. In epizootic lymphangitis the glands under the jaw may also be enlarged, as in the former disease, and a discharge may appear at one or both nostrils. If taken in the early stages, this disease is curable, but after an advanced stage is reached treatment is hopeless. In the latter case the animals emaciate and may die of exhaustion.

This disease is distinguished from farcy (glanders) by the presence of the cryptococcus in the pus and failure of the mallein test to produce a reaction. Both glanders and epizootic lymphangitis may be present in the same animal.

Post-mortem.—On post-mortem examination one usually sees little beyond what is seen during life, but occasionally abscesses are found in the internal organs.

The provisions of the Order of 1938, *supra*, are similar to those contained in other Diseases of Animals Orders, relating to notice of disease ; detention and isolation of suspected animals ; veterinary enquiry by the Ministry ; public warning as to disease ; detention of animals for observation ; cleansing and disinfection ; prohibition of exposure or movement of diseased or suspected animals or carcasses ; disposal of carcasses and digging up of carcasses. As the disease is now considered to have been eradicated in Great Britain, it is unnecessary to give the details of the Order of 1938.

Foot-and-Mouth Disease Order, 1928(c).—The following description of foot-and-mouth disease has been issued by the Ministry(d) :—

Definition.—A contagious and eruptive fever, due to a specific filter-passing, ultra-microscopic virus.

Animals affected.—All animals may suffer from this disease. Cattle, sheep and pigs are especially susceptible, but horses and dogs are very rarely affected. Occasionally human beings catch the disease.

Symptoms.—The disease usually appears suddenly and spreads with alarming rapidity. Mortality is not usually high, except when unweaned animals are attacked, but loss of condition is serious.

In all animals the temperature rises. In cattle, salivation or slobbering occurs, frothy saliva drips from the mouth and the animals frequently smack their lips. Vesicles or blebs are found inside the upper lip and on the tongue, the surface under the vesicles being red. Vesicles also appear on the feet at the top of the hooves and between the toes, and, in cows, on the teats. In sheep and pigs salivation is rare. In sheep the first noticeable symptom may be a sudden lameness on all four feet of several sheep in a flock.

(c) S.R. and O., 1928, No. 133.

(d) See note (v), *ante*, p. 502.

Vesicles appear inside the upper lip and on the feet. In pigs, vesicles appear on the feet and snout and, in sows, on the teats. Vesicles may sometimes appear on the bodies of pigs. The milk from affected cows may convey the disease to other animals and to human beings. The use of such milk is governed by the provisions of the Foot-and-Mouth Disease Order of 1928.

The provisions of the Foot-and-Mouth Disease Order, 1928, are as follows :—

Notice of disease.—Every person (including a veterinary surgeon) who becomes aware that an animal is suffering from foot-and-mouth disease must forthwith notify a police constable, who in turn must notify the Ministry, by telegram (see *post*, p. 529), the veterinary inspector of the Ministry and the inspector of the local authority. The latter must notify the local authority and the medical officer of health (Art. 1)(e).

Declaration of infected place.—An inspector of a local authority who receives a notification of disease or has reasonable grounds for suspecting the presence of foot-and-mouth disease within 56 days, must forthwith serve a notice (in the Form A in the First Schedule) on the occupier of the premises specifying the limits of the infected place. The infected place thereupon becomes subject to the rules contained in Article 7, *infra*. The inspector must send a copy of the notice to the Ministry, and copies to the local authority and the chief officer of police. On leaving the premises the inspector must thoroughly disinfect his clothes if they have been brought in contact with infection. The notice remains in force until withdrawn by a further notice (in the Form B in the First Schedule), served by an inspector or officer of the Ministry (Art. 3).

Veterinary inquiry by Ministry.—The veterinary inspector of the Ministry is required to carry out all the necessary examinations and investigations with respect to all suspected cases of foot-and-mouth disease. Such inspector before entering any premises must put on suitable boots and overall clothing which are capable of being disinfected and immediately before leaving such premises must thoroughly disinfect his boots, overall clothing and hands (Art. 4)(f).

Suspected cases to be certified by veterinary inspector.—If a veterinary inspector is of opinion that there are reasonable grounds for suspecting that an animal or carcass is affected with foot-and-mouth disease he must sign a certificate in the Form C in the First Schedule, and send it to the Secretary of the Ministry. He must also notify, by telegraph or other speedy means, the chief constable of any police area which is wholly or partly within a radius of five miles from the suspected outbreak, the station-master of the railway station nearest to the place of the suspected outbreak, and to the clerk of the local authority of each district in which any land within such radius of five miles is situated (Art. 5).

Restrictions to operate immediately on certification of suspected case.—Where a certificate has been signed by a veterinary inspector under Article 5, *supra*, it is unlawful to move any animal out of the area lying within a radius of five miles from

(e) As amended by Art. 1, Foot-and-Mouth Disease (Amendment) Order, 1938; S.R. and O., 1938, No. 192.

(f) As amended by Art. 2, *ibid*.

the infected place. The restricted area may be extended by an inspector of the Ministry by notice to that effect. These restrictions remain in operation until the expiration of two clear days after, but not including, the day on which the certificate is signed, but the restrictions may be withdrawn or extended for a period specified in the notice, by a notice signed by an inspector of the Ministry. An inspector may licence the movement of animals within the infected area, if he considers it reasonable to do so (Art. 6).

Rules to be observed on an infected place.—The following rules apply to infected places:—

Rule 1—No animal shall be moved into or out of an infected place except with a licence granted by an inspector or officer of the Ministry.

Rule 2—No horse, ass or mule shall be moved out of an infected place unless it has been disinfected to the satisfaction of an inspector.

Rule 3—No carcase shall be removed out of an infected place except with a licence granted by an inspector or officer of the Ministry and in accordance with such conditions as may be specified therein.

Rule 4—No live poultry, hare or rabbit, or the carcase of any head of poultry, hare or rabbit shall be removed out of any infected place except with a licence granted by an inspector and in accordance with such conditions as may be specified therein.

Rule 5—No fodder, litter, dung, utensil, pen, hurdle, vehicle or other thing shall be removed out of an infected place except with a licence granted by an inspector of the Ministry and in accordance with such conditions as may be specified therein.

Rule 6—All liquid manure, urine or shed-washings shall be thoroughly disinfected to the satisfaction of an inspector before being permitted to drain or escape from any shed, yard or other like place in which a diseased or suspected animal is or has recently been kept.

Rule 7—No person other than an inspector shall enter or leave an infected place unless authorised by and in accordance with a written permit obtained from an inspector.

Rule 8—Any person whatsoever entering any shed, field or other place in which a diseased or suspected animal is or has recently been kept shall wear suitable overall clothing and boots which are capable of being disinfected and are approved by an inspector, and shall before leaving such place thoroughly cleanse and disinfect such clothing and boots and also his hands.

Rule 9—Any veterinary inspector of the Ministry or of the local authority, and any valuer or any veterinary surgeon or other person employed by the owner to treat animals on any part of the infected place shall, before entering the infected place, put on suitable overall clothing made of rubber or other material impervious to liquid, and rubber boots, and shall before leaving the infected place thoroughly cleanse and disinfect his overall clothing, rubber boots and hands.

Rule 10—Where an inspector so directs any person upon leaving a shed, field, or other place in which a diseased or suspected animal is or has recently been kept shall leave the overall clothing in such shed, field or other place and shall thoroughly disinfect his hands and boots.

Rule 11—Any person tending a diseased or suspected animal shall not tend an animal not so diseased or suspected except with a written permit obtained from an inspector of the Ministry.

Rule 12—A receptacle containing an approved disinfectant shall be kept in some convenient place at all exits from an infected place as may be required by an inspector. Fresh disinfectant shall be placed in such receptacles as often as may be directed by an inspector.

Rule 13—The Minister, or an inspector of the Ministry acting under his direction, may by notice to the occupier of any premises subject to these rules require him to supply the disinfectant prescribed for use thereunder at the expense of the occupier.

Rule 14—Milk from any diseased or suspected animal shall not be moved from the infected place ; and unless and until it has been boiled or otherwise sterilised it shall not be used for the food of animals. Any utensil in which such milk is placed before being so treated shall be thoroughly sterilised with boiling water before any other milk is placed therein. For the purposes of this Rule the expression "*milk*" shall be deemed to include whey, buttermilk and separated milk. This rule shall not interfere with an animal suckling young (Art. 7).

Removal of dung or other things.—The removal of dung, fodder, litter or other thing that has been in an infected place, is prohibited, except by licence of an inspector of the Ministry (Art. 8).

Disinfection.—Every shed or other place where an animal affected with foot-and-mouth disease has been kept or has died or been slaughtered, must be disinfected and cleansed as follows :—

- (a) the whole of the interior of such shed or other place, including the fittings, must first be thoroughly washed or sprayed with an approved disinfectant ; then
- (b) all dung and other discharges must be scraped from the walls, fittings and floors, and then the shed or other place swept out. The sweepings and all litter, dung or other thing that has been in contact with, or used about, any animal must be effectually removed therefrom ; then
- (c) the floor of the shed or other place and all other parts thereof with which an animal or its droppings or any discharge may have come in contact must again be thoroughly washed or sprayed with an approved disinfectant.

All litter, dung or other thing removed from the shed or other place must be forthwith thoroughly disinfected or burnt or otherwise effectually destroyed. Where any field or other like place is not capable of being so disinfected and cleansed, it must be disinfected and cleansed so far as is practicable to the satisfaction of an inspector. The Minister may by notice in writing require the occupier of premises, etc., to carry out the work of cleansing and disinfection, and if he fails to do so, the Minister may carry out the necessary work and recover the costs from the person in default (Art. 9).

Prohibition of movement of animals exposed to infection—Where an inspector of a local authority has reasonable grounds for suspecting that an animal has been exposed to the infection of foot-and-mouth disease, he must forthwith serve a notice (in the Form D in the First Schedule) prohibiting the movement of the animal from the place where it is, the movement of any other animal from or out of such place, of the straying of any animal out of such place or so as to come in contact with any other animal (Art. 10).

An inspector of the Ministry may require the separate isolation of animals subject to a Form D notice (Art. 11) and the housing or removal of animals (Art. 12).

Prohibition from exposing or moving animals affected with or suspected of being affected with foot-and-mouth disease.—It is unlawful for any person—

- (a) to expose an animal affected with, or suspected of being affected with, foot-and-mouth disease in a market, fair-ground, sale-yard, place of exhibition or other public or private place where animals are commonly exposed for sale or exhibition ; or
- (b) to place such animal in a lair or other place adjacent to or connected with a market, fair-ground or sale-yard, or where animals are commonly placed before or after exposure for sale or exhibition ; or
- (c) to send or carry, or cause to be sent or carried, such animal on a railway, canal, river or inland navigation or in a coasting vessel ; or
- (d) to carry, lead or drive, or cause to be carried, led or driven, such animal on a highway, road or lane ; or
- (e) to place or keep such animal on common or unenclosed land or in a field or place insufficiently fenced, or in a field adjoining a highway, road or lane unless that field is so fenced or situate that animals therein cannot in any manner come in contact with animals passing along that highway, road or lane or grazing on the sides thereof ; or
- (f) to graze such animal on pasture being on the sides of a highway, road or lane ; or
- (g) to allow such animal to stray on a highway, road or lane or on the sides thereof, or on common or unenclosed land, or in a field or place insufficiently fenced (Art. 13).

Foot-and-mouth disease found or suspected in a market, railway station or other like place, or during transit.—If an animal is found to be affected with foot-and-mouth disease or is suspected to be so affected—

- (a) while exposed for sale or exhibited in a market, fair-ground, sale-yard, place of exhibition, or other public or private place where animals are commonly exposed for sale or exhibition ; or
- (b) while in a lair or other place where animals are commonly placed before or after exposure for sale or exhibition ; or
- (c) while in or on a landing-place or wharf or railway station or other place during transit ; or
- (d) while in course of being moved by land or by water ; or
- (e) while on common or unenclosed land ; or
- (f) while in any other place not in the possession or occupation or under the control of the owner of the animal or his authorised agent,

detailed provisions relating to seizure of such animals, declaration of infected place by Minister, disinfection, expenses and imported animals wharves, etc., are laid down (Art. 14).

The Order of 1928 also contains general provisions with respect to movement of animals, change of occupation of premises and powers of Minister to prevent spread of disease.

With a view to preventing the spread of foot-and-mouth disease, the *Foot-and-Mouth Disease (Boiling of Animal Foodstuffs) Order, 1932(g)*, requires—

- (a) any meat, bones, offal or other part of the carcase of an animal; or
- (b) any swill; or
- (c) any other broken or waste foodstuffs which have been in contact with meat, bones, offal or other part of the carcase of an animal,

to be boiled(*h*) before they are fed to animals, provided that this requirement does not apply to swill from premises in respect of which the occupier holds an effective certificate from the Minister or the local authority that all swill therefrom is subjected on such premises to a process of boiling within the meaning of the Order. Nor does it apply to proprietary foodstuffs in respect of which a certificate of exemption has been granted by the Minister.

The *Foot-and-Mouth Disease (Infected Areas Restrictions) Order, 1938(i)*, contains detailed provisions restricting the movement of animals in infected areas. An animal may be moved into an infected place direct to a farm or slaughterhouse situated not less than two miles from the infected place if accompanied by a licence granted by an inspector of the local authority. Markets are subject to control and may only be held in accordance with the provisions of the Order.

The *Foot-and-Mouth Disease (Packing Materials) Order, 1925(k)*, controls the use of packing materials and meat packings, with a view to preventing the spread of foot-and-mouth disease through the use of infected packing materials and packings.

The *Foot-and-Mouth Disease (Disinfection of Road Vehicles) Order, 1941(l)*, requires any road vehicle which has been used for the carriage of swill or for the carriage of any vessel, bag, sack or other container which has been used for the carriage of swill, to be thoroughly disinfected, the floor, roof and sides of the inside of the vehicle being effectually disinfected by being thoroughly washed with a 4 per cent. solution of sodium carbonate (washing soda). Feeding-stuffs for animals (other than swill) or litter or anything intended to be used for or about animals must not be conveyed in any road vehicle at the same time as it is being used for the carriage of swill or for the carriage of any vessel, bag, sack or other container which has been used for the carriage of swill. It is the duty of the local authority to enforce the provisions of this Order.

(g) S.R. and O., 1932, No. 803; as amended by *Foot-and-Mouth Disease (Boiling of Animal Foodstuffs) (Amendment) Order, 1940*; S.R. and O., 1940, No. 1795.

(h) "Boiled" means exposed for a period of at least one hour by any process to a temperature of not less than 212° F.—Art. 4, S.R. and O., 1932, No. 803.

(i) S.R. and O., 1938, Nos. 1434 and 1435; as amended by S.R. and O., 1941, No. 445 and S.R. and O., 1943, No. 66.

(k) S.R. and O., 1925, No. 1178; as amended by S.R. and O., 1926, No. 42.

(l) S.R. and O., 1941, No. 312; as amended by S.R. and O., 1942, No. 1794.

Fowl Pest Order, 1936(m).—The following description of fowl pest has been issued by the Ministry(n):—

The disease described as fowl pest includes the two diseases fowl plague and Newcastle disease—

Fowl Plague.

Fowl plague is an acute infectious disease of birds, with a rapid course and high mortality. The cause is a filter-passing virus. The disease occurs frequently in Europe, Palestine, Egypt and other countries. Fortunately, few outbreaks have been recorded in Great Britain. The disease may affect fowls, turkeys, geese, ducks, pheasants, guinea-fowls, peafowls and many wild birds.

The incubation period is usually 3–5 days, exceptionally varying from 2–7 days. Artificial infection of birds shows a fairly constant incubation period of two days. Mortality is usually 90–100 per cent.

Methods of infection.—The usual route of infection appears to be by the ingestion of water or foodstuffs contaminated by oral or nasal discharges and the faeces of affected birds.

Symptoms.—The symptoms closely resemble those of fowl cholera. Many birds affected with the acute form of the disease are found dead, without having previously exhibited symptoms. In the early stages of the disease a high temperature is usually recorded. The affected birds refuse food, are generally dejected, listless, feathers are ruffled and in some cases there is a discharge from the eyes and the nostrils.

Post-mortem appearances.—Small haemorrhages are observed on the heart and in the fat associated with the gizzard and the intestines. Minute haemorrhages also occur on the mucous membrane of the glandular stomach and the small intestine.

Diagnosis.—The outbreak of disease in a flock with high mortality and a short incubation period would lead one to suspect this disease. Definite diagnosis requires animal inoculation.

Treatment.—No treatment is known to be of any value in this disease.

Prevention.—(1) When symptoms and mortality suggest the possibility of the existence of this disease in a flock, typically affected specimens must be sent with history of the outbreak to the laboratory of the Ministry of Agriculture and Fisheries, New Haw, Weybridge, Surrey. (2) Pending the result of the diagnosis, all contact birds should be isolated. The removal of live birds from the premises is prohibited.

Newcastle Disease—

Newcastle disease is a highly infectious disease, with a heavy mortality and short period of incubation. It has been shown to be caused by a filter-passing virus, and was first recorded by Doyle in 1926, but fortunately the number of recorded outbreaks since has been remarkably small. The origin of all the outbreaks in Great Britain has been quite obscure. The disease affects the common fowl. Young pigeons can be artificially infected and some workers claim to have infected ducks and geese.

(m) S.R. and O., 1936, No. 1297.

(n) See note (v), *ante*, p. 502.

The average period of incubation is 5–7 days, either by natural contact infection or artificial inoculation. Mortality is usually 90–100 per cent.

Methods of infection.—The usual route of infection appears to be by way of ingestion of water and foodstuffs contaminated by oral and nasal discharges and the faeces of affected birds.

Symptoms.—The affected birds are noticed to be off their food and stand in a crouching position. A high temperature is noted in the early stages of the disease and the birds drink frequently. The birds assume a very sleepy appearance, eyes half to fully closed and wings and legs become paralysed.

The most characteristic symptom is seen in the respiratory system. There is a long gasping inhalation through the half-opened mouth, accompanied by a gurgling or rattling sound. Frothy exudate hangs in a bead from the point of the beak and a thick mucous discharge from the nostrils may be found.

Post-mortem appearances.—These are not characteristic and diagnosis can only be made by means of animal inoculation.

Treatment.—No known treatment is of any value in this disease.

Prevention.—(1) When symptoms and mortality suggest the possibility of the existence of this disease in a flock, typically affected specimens should be sent with the history of the outbreak to the laboratory at the address shown above. (2) Pending the result of the diagnosis all contact birds should be isolated. The removal of live birds from the premises is prohibited.

The provisions of the Fowl Pest Order, 1936, are as follows :—

Notice of disease.—Every person having in his possession any poultry(o) affected or suspected to be suffering with fowl pest must forthwith notify the Director, Laboratory of the Ministry of Agriculture and Fisheries, New Haw, Weybridge, Surrey, giving full details, and at the same time dispatch the carcase of the diseased or suspected bird to the laboratory for the purpose of examination. The bird should be carefully packed and be sent by passenger train and not by post. A veterinary surgeon who becomes aware of a case of fowl pest is also required to carry out the same procedure (Art. 1).

Precautions to be adopted on premises on which disease is suspected.—The occupier of premises must prevent the access of poultry or of any person to the premises, and detain all poultry thereon. Such restrictions remain until removed by notice (Form A in the Schedule) is served by an inspector of the local authority (Art. 2).

Rules to be observed on an infected place.—Where the disease is confirmed by the Chief Veterinary Officer of the Ministry, the local authority must serve a Form A notice, thereupon the premises concerned are an infected place and are subject to the following rules :—

Rule 1—No live poultry shall be moved into or out of the infected place.

(o) "Poultry" means any live bird or birds of the following species. domestic fowls, turkeys, geese, ducks, guinea-fowls and pigeons—Art. 12. S.R. and O., 1936, No. 1297.

Rule 2—No carcase shall be removed out of the infected place except with a licence granted by an inspector or officer of the Ministry and in accordance with such conditions as may be specified therein.

Rule 3—No eggs intended for hatching shall be moved out of the infected place.

Rule 4—No foodstuffs, litter, droppings, utensil, food-bag, crate, hurdle, poultry appliance, vehicle or other thing shall be removed out of the infected place except with a licence granted by an inspector of the local authority and in accordance with such conditions as to disinfection or otherwise as may be specified therein.

Rule 5—All droppings, litter and waste food shall be thoroughly disinfected to the satisfaction of an inspector of the Ministry or of the local authority before being permitted to be removed from any building, house, shed, pen, yard or other place in which the affected or suspected poultry or carcase are or have recently been kept.

Rule 6—No person, other than an inspector of the Ministry or of the local authority or the person attending the poultry, shall enter or leave the infected place unless authorised by, and in accordance with, a written permit obtained from an inspector of the Ministry or of the local authority.

Rule 7—Any person whatsoever entering any part of the infected place shall wear suitable overall clothing and boots which are capable of being disinfected and shall, before leaving such place, thoroughly cleanse and disinfect such clothing and boots and also his hands.

Rule 8—Any person attending affected or suspected poultry shall not attend poultry not so affected or suspected unless authorised by and in accordance with a written permit obtained from an inspector of the Ministry or local authority.

Rule 9—The occupier of any premises subject to these Rules shall, if so required by a notice served on him by an inspector of the Ministry, supply the disinfectant required to be used at his own expense and, if he fails to do so, it shall be lawful for the Minister, without prejudice to the recovery of any penalty for the infringement of this rule, to supply the disinfectant and to recover summarily as a civil debt from the occupier the expenses of so doing.

The Minister may cause affected or contact poultry to be slaughtered (Art. 5) and compensation is payable by the Minister (Art. 6).

Cleansing and disinfection.—Any premises or place on which there has been any poultry or carcase affected with or suspected of fowl pest, and any vehicle in which such poultry or carcase has been conveyed, and any utensil, appliance or other thing thereon or used in connection therewith, must be cleansed and disinfected with a disinfectant(*p*) in the manner prescribed by notice in writing served upon the occupier of the premises by an inspector of the Ministry. If the occupier fails to carry out the work satisfactorily, the Minister may do so and recover the costs incurred from the person in default (Art. 7).

(*p*) "*Disinfectant*" means either a 4 per cent. solution of sodium carbonate (washing soda) in water or such other disinfectant as may be approved for the time being by the Minister—*ibid.*

Restriction on movement of poultry exposed to infection.—Where an inspector of the Ministry or the local authority is of opinion that any poultry on premises has been exposed to the infection of fowl pest he must forthwith serve a notice (in the Form B in the Schedule) on the occupier of the premises, prohibiting the movement of poultry from the premises except subject to the conditions laid down in the notice (Art. 8).

Glanders or Farcy Order, 1938(*q*).—The following description of glanders or farcy has been issued by the Ministry(*r*) :—

Definition.—These two names are applied to one and the same disease, which is due to a microbe—*Bacillus Malleus*. The disease is called “farcy” when located on the surface of limbs or body; “glanders” when the principal symptoms are seen in the nostrils, submaxillary glands and lungs.

Animals affected.—The horse tribe is most commonly affected with glanders. Man not infrequently gets the disease from the horse by inoculation through a wound. The dog, the cat and the wild carnivora may be infected. The ox is absolutely immune. Sheep, goats and pigs are immune for all practical purposes.

Symptoms.—A horse may be affected with glanders and show no symptoms except slight unthriftiness. This is called occult glanders, and can only be diagnosed by the mallein test.

In typical clinical cases there is a thick grey-coloured discharge from one or both nostrils. Ulcers and ulcerous patches are seen inside the nasal cavities and the glands under the jaw are enlarged and hard. The temperature may be raised, but in chronic cases it may be no higher than the normal. In severe and acute cases the temperature is several degrees above normal and the animal shows distinct symptoms of respiratory disease. In farcy one or more limbs are swollen. The lymph vessels stand out prominently on the inside of the limbs. The vessels give a cord-like feel to the hand, and small nodules appear along the course of the vessels. These nodules frequently burst and become ulcers, which discharge a thick, yellow fluid of oily appearance. The ulcers may heal and leave a scar, but they usually break out again. Farcy may also appear on the skin of the neck and body.

Post-mortem.—One sees the ulcers on the skin if farcy has been present. Besides what one sees in the live animal, one may also find ulceration of the throat and air passages. The most constant changes are, however, found in the lungs. In acute glanders, small grey nodules about the size of a pin-head are seen all through the lung substance. In the chronic forms the nodules in the earlier stages appear as small, grey patches with a red margin. Others are of pus-like consistence. The other nodules are hard and shot-like to the touch; some of them are gritty—calcification. The number of nodules in a lung varies from one or two to hundreds. The donkey suffers from an acute form of glanders, in which the lungs are inflamed over a large surface, the tissue is solid and on section the surface of the lung has a greyish-red colour.

The provisions of the Order of 1938, *supra*, are similar to those contained in other Diseases of Animals Orders, relating to notice of disease; detention of diseased and suspected animals;

(*q*) S.R. and O., 1938, No. 228.

(*r*) See note (*v*), *ante*, p. 502.

veterinary inquiry by the Ministry ; public warning as to disease ; slaughter of certain animals ; testing of suspected animals ; valuation for compensation ; post-mortem examination of suspected animals ; compensation for slaughter ; marking of diseased and suspected animals ; cleansing and disinfection ; destruction of infected articles ; prohibition of exposure or movement of diseased or suspected animals or carcasses ; restriction on movement of dung ; disposal of carcasses and digging up of carcasses. As the disease is now considered to have been eradicated in Great Britain, it is unnecessary to give the details of the Order of 1938.

Parasitic Mange Order, 1938(s).—The following description of parasitic mange has been issued by the Ministry(t) :—

Definition.—The same definition may be applied here as in scab of sheep (see *post*, p. 524). The disease is the same, except that it is caused by different varieties of acari.

Sarcoptic and psoroptic mange in horses and mules often begin on those parts of the body to which the harness is applied, but they extend to other parts if neglected.

Symptoms.—Sarcoptic mange is the more serious, as it does not yield readily to treatment. The animals rub themselves and express satisfaction by moving the lips when scratched. Pimples and scabs appear at the seat of the disease, and the hair gets rubbed off. In neglected cases the skin becomes hard and folded, the animals emaciate, and they may die of exhaustion.

Symbiotic mange appears at the root of the tail and on the lower part of the limbs. The symptoms are not severe, but the animals suffer a good deal of irritation, which they express by rubbing the tail and stamping the feet. Sometimes they seriously injure the coronets by tramping on the itching parts.

The provisions of the Parasitic Mange Order, 1938, are as follows :—

Notice of disease and separation of diseased and suspected animals.—

Every person having in his possession a horse, ass or mule affected with or suspected of being affected with parasitic mange as defined in the Order(u), must isolate the animal from other horses, asses and mules, and notify a police constable. A veterinary surgeon who finds a case of the disease must also notify a police constable.

The police constable receiving a notification of disease must notify the veterinary inspector of the Ministry and the inspector of the local authority, and the latter must inform the authority (Art. 1).

Detention of diseased and suspected animals.—An inspector of the local authority must notify the veterinary inspector of the Ministry, if he has not already been informed by a police constable, and proceed to the place where the animal is, serving on the occupier of the premises a Detention Notice (in the Form A in the Schedule to the Order) requiring the detention of the

(s) S.R. and O., 1938, No. 227.

(t) See note (v), *ante*, p. 502.

(u) "*Parasitic mange*" means sarcoptic mange and psoroptic mange of horses, asses and mules—Art. 10, S.R. and O., 1938, No. 227.

affected animal. If it is considered desirable for the treatment of the animal, an inspector of the local authority may issue a further Detention Notice A requiring the moving of the animal to some other premises. A Form A Notice remains in force until withdrawn by a further notice in writing (Form C in the Schedule). Copies of all notices must be sent to the local authority, the chief officer of police and the Ministry.

Veterinary inquiry by Ministry.—The veterinary inspector of the Ministry is required to carry out an examination of the infected animal, as in the case of anthrax (see *ante*, p. 503).

Treatment of diseased or suspected animals and of other animals in a place of detention.—Every animal subject to a Detention Notice (Form A) must be treated in accordance with the instructions of a veterinary inspector of the Ministry. When the report of the veterinary inspector shows that all animals are free from parasitic mange and the local authority are satisfied that the place of detention has been cleansed and disinfected in accordance with the provisions of Article 6 of the Order, *infra*, they must withdraw the Detention Notice (Art. 4).

Provisions for detention and treatment of animals exposed to infection.—Where a veterinary inspector considers it necessary, he may serve a notice (Form B in the Schedule) requiring the detention and treatment of any horse, ass or mule which has been in contact with a case of parasitic mange. Such a notice remains in force until withdrawn by a further notice (Form C in the Schedule), which must be served when the inspector of the local authority is satisfied that the treatment required by Notice B has been properly carried out. Copies of notices served under this Article must be sent to the local authority, chief officer of police and the Ministry (Art. 5).

Cleansing and disinfection.—Any place in which an affected animal has been kept must be cleansed and disinfected to the satisfaction of an inspector of the local authority as follows :—

- (a) the place must be swept out and all litter and sweepings must forthwith be burned or be well mixed with quicklime and be effectually removed from contact with horses, asses or mules ; and
- (b) the floor of the place and all other parts thereof with which the animal has come in contact must be thoroughly washed, scrubbed or scoured with water, and then as far as practicable be disinfected in accordance with the provisions of this Article ; then
- (c) in the case of a field or other place which is not capable of being so cleansed and disinfected, it will be sufficient if the field or place is cleansed and disinfected as far as practicable and to the satisfaction of an inspector of the local authority.

Every utensil, manger, feeding-trough, pen, hurdle, harness, article of clothing or other thing used for or about the animal must be thoroughly washed, or scrubbed, or scoured with water, and subsequently disinfected, at the expense of the owner. Every place or thing or part thereof required to be disinfected must be thoroughly coated or washed with an approved disinfectant. If a person fails to carry out the work of cleansing and disinfection the local authority may, without prejudice to their right to institute proceedings in respect of such default, carry out the work themselves and recover the costs incurred from the person in default (Art. 6).

Prohibition of exposure or movement of animals affected with or suspected of being affected with parasitic mange.—It is not lawful for any person—

- (i) to expose a horse, ass or mule affected with, or suspected of being affected with parasitic mange in a market, fair, sale-yard or other public or private place where such animals are commonly exposed for sale ;
- (ii) to place a horse, ass or mule affected with, or suspected of being affected with, parasitic mange in a lair or other place adjacent to or connected with a market, fair-ground, sale-yard or where such animals are commonly placed before exposure for sale ;
- (iii) to send or carry, or cause to be sent or carried, a horse, ass or mule affected with or suspected of being affected with parasitic mange, on a railway, canal, river or inland navigation or in a coasting vessel ;
- (iv) except with a licence granted in accordance with the terms and conditions prescribed by a Detention Notice (Form A) or by a Notice Form B, to carry, lead or drive, or cause to be carried, led or driven on a highway or thoroughfare, a horse, ass or mule affected with or suspected of being affected with parasitic mange ;
- (v) to place or keep a horse, ass or mule affected with or suspected of being affected with parasitic mange on common or unenclosed land, or in a field or place insufficiently fenced, or in a field adjoining a highway unless the animal is in charge of an attendant or the field is so fenced or situate that any horse, ass or mule therein cannot in any manner come in contact with any horse, ass or mule passing along that highway or grazing on the sides thereof ;
- (vi) to graze a horse, ass or mule affected with or suspected of being affected with parasitic mange on pasture being on the sides of a highway ; or
- (vii) to allow a horse, ass or mule affected with or suspected of being affected with parasitic mange, to stray on a highway or thoroughfare or on the sides thereof, or on common or unenclosed land, or in a field or place insufficiently fenced (Art. 7).

If an animal is exposed or otherwise dealt with in contravention of the above provisions, an inspector of the local authority may seize, remove and detain it on some suitable premises for the purpose of detention and treatment, and notify the veterinary inspector of the Ministry (Art. 7).

Pleuro-pneumonia Order, 1928(*v*).—The following description of pleuro-pneumonia has been issued by the Ministry(*w*) :—

Definition.—A contagious disease affecting the lungs and pleura and due to an infective agent.

Animals affected.—Bovine animals.

Symptoms.—The first signs of disease often escape notice. The temperature rises. A dry, husky cough is present, especially when the animal first gets on its feet or when made to run. In marked cases the breathing is rapid and the movement of the flanks is increased. If punched in the ribs, the animal may

(*v*) S.R. and O., 1928, No. 205 ; as amended by S.R. and O., 1938, No. 195.
(*w*) See note (*v*), *ante*, p. 502.

grunt or show signs of pain. Some of the affected animals may become greatly emaciated, but others, especially those which have passed the acute stages, may appear to be in excellent condition. It does not follow, however, that the latter are cured; they continue to infect others for a very long time.

Post-mortem.—The chest cavity often contains a yellow fluid. The lungs may be fixed to the ribs by a thick yellowish membrane.

The lungs are very solid in parts and the surface is often yellow. The cut section is marbled in red and yellow. The septa (or fibrous tissue lines) are very broad and a yellow fluid exudes from the cut surface. In old cases a grey area of soft dead tissue is often present in the lung, and this may be surrounded by new fibrous tissue. Sometimes abscesses are found. The flesh may be quite good and fit for food if the animal has been slaughtered. In the acute stages, however, and in emaciated animals, it is watery, of poor quality and should not be eaten.

The provisions of the Order of 1928, *supra*, are similar to those contained in other Diseases of Animals Orders, relating to notice of disease; declaration of infected place; veterinary inquiry; rules to be observed on an infected place; removal of dung or other things; disinfection; prohibition of movement of animals exposed to infection; prohibition from exposing or moving animals affected or suspected of pleuropneumonia and pleuro-pneumonia found or suspected in a market, railway station or other like place, or during transit. As the disease is now considered to have been eradicated in Great Britain, it is unnecessary to give the details of the Order of 1928.

Rabies Order, 1938(*x*).—The following description of rabies has been issued by the Ministry(*y*):—

Definition.—An inoculable disease caused by a still undiscovered agent.

Animals affected.—All animals and human beings may suffer from rabies if the virulent material be inoculated, but it is chiefly by the dog that the disease is spread. In countries where the disease is prevalent, cases not infrequently occur among cats. In human beings the disease is called hydrophobia.

Symptoms.—The disease is characterised in the earlier stages by maniacal symptoms and later by paralysis.

A dog is observed to change its former habits. He is restless and often seeks dark corners, or wanders away from his home in an aimless way. He will sometimes snap at persons, other animals and inanimate objects (furious rabies). He may also foam at the mouth. He will tear up and swallow such articles as wood and cloth, in fact it sometimes happens that attention is drawn to his condition by the lodgement of a sharp object in his throat. The voice becomes altered to what might be described as a weird howl.

In the later stages paralysis sets in (dumb rabies), which first affects the lower jaw, but may ultimately show itself in the limbs. The jaw drops and saliva, which the dog is unable to swallow, trickles from the mouth.

(*x*) S.R. and O., 1938, No. 202.

(*y*) See note (*v*), *ante*, p. 502.

Persons are sometimes inoculated by getting the saliva on the fingers and unwittingly rubbing it into the eyes or scratches.

It should be noted that the saliva has been found virulent in experimentally inoculated animals three days before the appearance of even the premonitory symptoms.

Post-mortem.—The post-mortem appearances are not constant. For this reason the head and neck of a suspected dog should be immediately sent by a veterinary inspector to the Ministry's Laboratory for investigation.

The principal changes observed are congestion of the membranes of the throat and a similar condition in various parts of the stomach and bowel. The stomach may be quite empty except for a variable quantity of blood-stained mucus. If, however, the dog has been killed in the earlier stages the stomach may contain a mass of foreign material such as wool, hair, wood, coal, etc.

The provisions of the Order of 1938, *supra*, are similar to those contained in other Diseases of Animals Orders, relating to notice of disease(z) ; service of isolation notices ; veterinary inquiry ; compulsory slaughter of diseased dogs and cats ; isolation of dogs and cats exposed to infection ; seizure of animals in case of default ; disposal of carcasses ; disinfection and digging up of carcasses. As the disease is now considered to have been eradicated in Great Britain, it is unnecessary to give the details of the Order of 1938.

Sheep-pox Order, 1938(a).—The following description of sheep-pox has been issued by the Ministry(b) :—

Definition.—A contagious eruptive fever caused by a specific filter-passing, ultra-microscopic virus.

Animals affected.—Only sheep are liable to contract this disease. The possibility of its being re-introduced is remote, because—although an inoculable disease—it has never appeared in this country otherwise than by the importation of diseased living animals, and the Orders of the Minister prohibit the landing in Great Britain of sheep from those countries in which sheep-pox exists. It might, however, arise from the importation of virus.

Symptoms.—Sometimes the disease runs a very rapid course, which ends fatally in a few days. This form of the disease is seen mostly in lambs. The chief symptoms are those of fever, intoxication and paralysis. An eruption in the form of red spots appears on the membranes of the eyes and nose and on the hairless parts of the skin.

In older sheep the disease begins by signs of serious ill-health. The temperature is high and the appetite is suppressed. An eruption appears on the mucous membranes of the nose, eyes and mouth, and on the hairless parts of the skin—inside the thighs and elbows, under the belly, on the scrotum and udder. The eruption may, however, appear also on the parts of the body covered by wool. On the hairless regions it shows itself

(z) The inspector of the local authority must notify the medical officer of health in addition to the local authority.

(a) S.R. and O., 1938, No. 229.

(b) See note (v), *ante*, p. 502.

first in the form of small pimples, which may grow to the size of a sixpenny-piece, or even larger. The larger pimples are flattened on the surface and the skin around the base is reddened. A thick reddish-yellow discharge oozes from the pimples and forms yellow crust on the surface. Pregnant ewes often abort.

Post-mortem.—One finds the above-described eruption on the skin. The membrane of the throat is inflamed and sometimes ulcerated. The covering membrane of the lungs shows red spots on its surface.

Solid grey patches are often found in the lung substance. The cavities of the chest, heart sac and abdomen contain a reddish coloured fluid. The intestinal membrane is sometimes inflamed in patches.

The kidneys often show grey patches under the capsule.

The provisions of the Order of 1938, *supra*, are similar to those contained in other Diseases of Animals Orders, relating to notice of disease ; declaration of infected place ; veterinary inquiry by Ministry as to existence of sheep-pox ; suspected cases to be certified by veterinary inspector ; restrictions to operate immediately on certification of suspected case ; rules to be observed on an infected place ; powers of Minister to slaughter and payment of compensation ; removal of dung or other things ; disinfection ; prohibition of movement of animals exposed to infection ; power to require housing or removal of sheep ; prohibition from exposing or moving sheep affected with, or suspected of sheep-pox ; sheep-pox found or suspected in a market, railway station or other like place, or during transit ; seizure of animals ; declaration of infected place by Minister only ; imported animals wharves, etc. ; and powers of Minister to prevent spread of sheep-pox. As the disease is now considered to have been eradicated in Great Britain, it is unnecessary to give the details of the Order of 1938.

Sheep Scab Order, 1938(c).—The following description of sheep scab has been issued by the Ministry(d) :—

Definition.—A disease of the skin caused by certain members of a class of small insects known as acari.

Animals affected.—Scab is popularly known in animals other than sheep as mange. The parasites which cause mange belong to the same family as those which cause scab, but they are a different variety. In sheep three forms of scab are met with. Psoroptic scab, due to the "*psoroptis communis*," is the most common form found in sheep. Sarcoptic scab, or mange, due to the "*sarcoptes scabiei var. ovis*," occurs in sheep, but it is rare.

Symbiotic (scab) mange is also known, but this disease is not included in the term "sheep scab" for the purposes of the Orders of the Minister relating to sheep scab.

(c) S.R. and O., 1938, No. 196.

(d) See note (v), *ante*, p. 502.

The provisions of the Sheep Scab Order, 1938, are as follows :—

Notice of Disease.—Notification of cases of sheep scab must be carried out in a similar manner to cases of anthrax (see *ante*, p. 502) but notice need not be sent to the medical officer of health (Art. 1).

Duty of inspector to serve detention notice in suspected cases.—The inspector of the local authority must inform the veterinary inspector of the Ministry, if he has not already been informed by a police constable, proceed to the place where the animals are, and serve a Detention Notice (Form A in the First Schedule to the Order) on the owner of the sheep prohibiting the movement of the animals, or of any other sheep into the detention area. Sheep may be moved for the purpose of slaughter provided a licence in the Form H in the First Schedule is issued by an inspector of the local authority. Before such a licence may be issued, the owner of the sheep must mark the animals at his expense by stamping or painting with an indelible composition of red colour of a broad line down the back and another broad line across the loins of each of the sheep, thus +, each line being not less than nine inches long; the sheep while being moved must be kept separate from other sheep; any sheep showing clinical signs of sheep scab must be moved in a float, cart or van; and the fleeces of sheep so slaughtered must not be removed from the slaughterhouse unless and until they have been disinfected by being immersed for at least one minute in an approved sheep-dip. A Form A Notice remains in force until withdrawn by a Form B Notice (Art. 2).

Veterinary inquiry by Ministry as to existence of sheep scab.—A veterinary inspector of the Ministry must examine suspected sheep and make all the necessary investigations as in the case of other scheduled diseases (Art. 3).

Action where sheep scab is found to exist.—Where a veterinary inspector is satisfied that sheep scab exists or has done so within 56 days, he must make a report to that effect in the Form D in the First Schedule, and forward it to the local authority. A copy of the report must be sent to the Ministry (Art. 5).

Treatment of sheep where sheep scab is found to exist.—The owner of affected sheep must cause the animals to be treated in accordance with the instructions of the veterinary inspector, which must include a requirement that such sheep must be double-dipped in the presence and to the satisfaction of an inspector of the local authority. A Detention Notice Form A may not be withdrawn by the local authority until they are satisfied that the sheep have been thoroughly treated and double-dipped, and a certificate from the veterinary inspector to the authority shows that the sheep are free from scab (Art. 6).

Service of Isolation and Dipping Notices in respect of sheep exposed to infection.—An inspector of a local authority must serve an Isolation Notice (Form C in the First Schedule) on the owner of any sheep which he has reason to believe have been in contact with sheep suffering from scab and until such notice is withdrawn by another notice in writing (Form F in the First Schedule), sheep to which the notice relates must not be moved from the premises where they are at the time of the service of the notice, except under a licence in the Form H (see *supra*) for the purpose of slaughter, or be permitted to stray from or out of the premises, or be permitted to come in contact with other sheep.

If, as a result of a veterinary inquiry, it appears that sheep scab exists or has within 56 days existed on any premises, the inspector of the local authority must serve an Isolation Notice (Form C) on the owner of the sheep and also a Dipping Notice (Form E in the First Schedule), requiring that such sheep shall be double-dipped^(e). The dippings must be carried out on such dates and at such dipping-places as may be required by the inspector (Art. 7).

Reports by local authority to the Ministry.—The local authority must supply the Ministry with particulars, in the prescribed form, of the action taken by their inspector under the Order (Art. 8).

Prescribed manner of cleansing and disinfection for sheep scab.—Any place in which sheep suffering with sheep scab have been kept, and all utensils, pens, hurdles and things in such place, must be cleansed and disinfected by and at the expense of the owner, as follows :—

- (a) the floor of the place, float, cart or van and all other parts thereof and all litter or other thing that has been in contact with, or used by, such sheep must be thoroughly saturated with an approved sheep-dip or approved disinfectant ;
- (b) the place, float, cart or van must thereafter be swept out and all litter, waste fragments of wool and sweepings that have been in contact with such sheep must be buried or effectually destroyed ;
- (c) every utensil, pen, hurdle or other thing used for or about such sheep, must, as soon as practicable after being so used and before being used for other sheep, be cleansed and disinfected to the satisfaction of the inspector of the local authority, by being thoroughly swabbed with an approved sheep-dip or approved disinfectant.

In the case of a field, yard or other place which is not capable of being cleansed and disinfected as above, all waste fragments of wool must be collected from the field, etc., and all rubbing-places disinfected, and all other parts of the field, etc., disinfected to the satisfaction of the inspector of the local authority. If a person neglects to carry out the work of cleansing and disinfection the local authority may do so and recover the costs incurred from the person in default (Art. 9).

Prohibition from exposing or moving sheep affected with, or suspected of, sheep scab.—It is not lawful for any person—

- (a) to expose a sheep affected with, or suspected of, sheep scab in a market, fairground, sale-yard, place of exhibition or other public or private place where sheep are commonly exposed for sale or exhibition ; or
- (b) to place such sheep in a lair or other place adjacent to or connected with a market, fairground or sale-yard, or where sheep are commonly placed before or after exposure for sale or exhibition ; or
- (c) to send or carry, or cause to be sent or carried, such sheep by railway, canal, river or inland navigation, or in a coasting vessel ; or

(e) " Double-dipping " means dipping twice, the second dipping taking place not earlier than the eighth day and not later than the fourteenth day after the date of the first dipping (excluding that date)—Art. 41, S.R. and O., 1938, No. 196.

- (d) to carry, lead or drive, or cause to be carried, led or driven such sheep on a highway, road or lane ; or
- (e) to place or keep such sheep on common or unenclosed land, or in a field or place insufficiently fenced, or in a field adjoining a highway, road or lane unless that field is so fenced or situate that sheep therein cannot in any manner come in contact with sheep passing along that highway, road or lane or grazing on the sides thereof ; or
- (f) to graze such sheep on pasture being on the sides of a highway, road or lane ; or
- (g) to allow such sheep to stray on a highway, road or lane or on the sides thereof, or on common or unenclosed land, or in a field or place insufficiently fenced (Art. 10).

Procedure in case of contravention of Article 10.—Where a person contravenes the provisions of Article 10 an inspector of the local authority may seize the sheep concerned and detain them in accordance with the provisions of Article 2 of the Order (see *supra*) (Art. 11).

Power to slaughter ownerless sheep.—Sheep affected with sheep scab, the ownership of which cannot be established, may be slaughtered by the local authority (Art. 12).

Power to restrict movement or require double-dipping of sheep on specified premises.—Where considered necessary, an inspector of a local authority may serve a notice (Form G in the First Schedule) prohibiting the movement of sheep from premises (except under licence in the Form H—see *supra*). All such sheep must be double-dipped on such dates as may be specified on the notice (Art. 13).

Provisions applicable to movement areas.—Part II of the Order (Articles 14 to 16) contain provisions restricting the movement of sheep out of movement areas, except for the purposes of slaughter under licence (Form H).

Provisions applicable to double-dipping areas.—Part III of the Order (Articles 17 to 21) contains provisions with respect to the double-dipping of sheep in such areas.

Powers of local authority to make regulations as to sheep brought into, or moved within their district ; and as to compulsory dipping of sheep.—Part V of the Order (Article 25) enables a local authority to make regulations requiring the dipping of sheep moved into their district from the district of any other local authority ; for requiring the notification to their inspector of the movement of sheep into their district ; for regulating the movement of sheep within their district ; and for prescribing, regulating and securing the periodical treatment by dipping of all sheep in their district or in any part thereof. Regulations made by a local authority are subject to confirmation by the Minister.

Marking of sheep.—Where he considers it necessary, an inspector of a local authority may mark for identification purposes sheep subject to the provisions of the Order (Art. 29).

Labels to be affixed to approved sheep-dips.—Every package or other receptacle containing an approved sheep-dip must, before being placed on sale, be clearly and distinctly marked by the manufacturer or vendor with a label in a form approved by the Minister. The label must state the dilution at which the dip is approved by the Minister and certify that the contents are of the same quality and composition as the sample submitted to the Government Chemist, upon which the Minister's approval is based (Art. 31). An inspector of a local authority or a police constable may take samples of sheep-dips for analysis (Art. 32).

Power to provide dipping-places.—A local authority may provide dipping-places within their district, subject to the approval of the site by the Minister (Art. 33).

Swine Fever Order, 1938(*f*).—The following description of swine fever has been issued by the Ministry(*g*):—

Definition.—A contagious eruptive disease caused by a specific virus.

Animals affected.—Swine.

Symptoms.—The disease may come on rapidly, especially in young pigs. This is the acute form, which generally ends fatally in about three days. The symptoms are less definite than in chronic cases. The temperature is high—103° Fahr., or even higher. The breathing is quick; the pigs seem to have lost control over their hindquarters, and stagger if made to walk. A red rash appears on the skin at the base of the tail, under the belly, inside the thighs and on the ears.

Usually the symptoms come on more slowly.

The pigs appear to be dull; they lie under cover and are disinclined to move. The appetite is lost; frequently the animals vomit. Constipation, followed by diarrhoea with blood-stained faeces, is often observed. A mucous discharge may be present around the eyes. Red patches, which later on assume a violet tinge, are observed at the base of the tail, inside the thighs and hocks, under the belly and on the ears. The temperature is high—104° to 106° Fahr.

The pigs can be roused only with difficulty, and when made to move they stagger about as if inebriated. Very frequently lung symptoms are present. In this case the sick animals suffer from a short cough, and the breathing is very laboured. The lung symptoms are not necessarily due directly to swine fever, but they frequently accompany it, and one must always be suspicious if a number of pigs show signs of lung trouble. The animals die in from one to three weeks. They may, however, recover or drag on for two months or more in an emaciated condition. In countries where the disease has been long established an infected animal sometimes appears to be in normal health.

Post-mortem.—The carcase is generally emaciated. The discoloured patches on the skin have a livid hue, but this is also seen in other diseases in swine.

In acute cases followed by rapid death, the changes are not characteristic, but one's suspicions should be aroused if a number of swine become sick about the same time. In the more chronic cases the most characteristic change—ulceration—is found in the alimentary tract. The ulcers may be present on the tongue, the stomach or any part of the bowel, but in most cases they are confined to the more posterior portions of the latter, particularly around the junction of the ileum with the caecum.

The most typical ulcer is about a half-inch in diameter. Its edges are circular and raised above the membrane. The centre of the ulcer is soft and often yellow or black in colour. The other parts of the bowel may be inflamed, and often the inner surface is covered by a yellowish deposit. Two loops of bowels may have grown together.

The lungs are very often, though not always, solid in patches, and fluid may be present in the chest. The glands are very red in colour in the more acute cases.

(*f*) S.R. and O., 1938, No. 203.

(*g*) See note (*v*), *ante*, p. 502.

The provisions of the Swine Fever Order, 1938, are as follows :—

Notice of Disease.—Similar provisions with respect to the notification of animals suffering or suspected to be suffering from swine fever, apply as in the case of anthrax (see *ante*, p. 502), with the addition that the police constable must inform the Secretary, Ministry of Agriculture and Fisheries, Whitehall Place, London, S.W.1, by telegraph(*h*) (Art. 1).

Declaration of infected place.—The inspector of the local authority must serve a notice (Form A in the First Schedule) on the occupier of premises where there is a case or suspected case of swine fever, or where there has been a case or suspected case within 28 days, declaring the premises to be an infected place. Such premises become subject to the rules laid down in Article 4 of the Order. A notice with respect to the infected place, in the Form D in the First Schedule, must be exhibited at the entrance to the infected place (Art. 2).

Veterinary inquiry by Ministry as to the existence of swine fever.—The veterinary inspector of the Ministry must carry out an inquiry into all cases of suspected swine fever, in a similar manner to that prescribed in the case of anthrax (see *ante*, p. 503) (Art. 3).

Rules to be observed in relation to infected places.—The following rules apply to infected places :—

Rule 1—Pigs shall not be moved into or out of an infected place except with a licence granted by an inspector or officer of the Ministry and subject to such conditions as may be prescribed therein.

Rule 2—Pigs in an infected place shall not be allowed by the owner or person in charge thereof to stray from or out of the infected place.

Rule 3—Any carcase of a pig may be removed from an infected place if it is intended to be used for the food of man and has been dressed for that purpose, and is not the carcase of a pig affected, or suspected of being affected with swine fever, or of a pig slaughtered under the Act of 1894, but the person who removes it shall forthwith notify to an inspector of the local authority of the district the fact of such removal, the place to which it was removed and the name and address of any person to whom it was consigned. Subject to this provision carcasses of pigs shall not be removed from an infected place except with permission in writing from an inspector or officer of the Ministry or an inspector of the local authority.

Rule 4—Notice of the death of any pig on the infected place shall be given by the owner or person in charge thereof forthwith to a constable of the police force for the police area in which the carcase is.

Rule 5—Foodstuffs (including swill), litter, dung, utensils, pens, hurdles, vehicles, sacks or other things shall not be removed from an infected place except with a written permit obtained from an inspector of the local authority, which permit shall require that where practicable the thing referred to in the permit shall first be thoroughly disinfected, sterilised or otherwise dealt with in a manner approved by the inspector.

(*h*) Telegraphic address, " Agrifi, Parl, London."

Rule 6—No person shall enter any part of an infected place unless he is authorised to do so by a written permit from an inspector of the local authority. This prohibition does not apply to the entry of an inspector or of the owner of the pig or his representative or of a person tending the pig or of a veterinary surgeon employed by the owner.

Rule 7—Every person immediately before leaving an infected place shall thoroughly cleanse and disinfect his boots with an approved disinfectant and also wash his hands with soap and water.

Rule 8—Any person tending a pig on an infected place shall not tend a pig on any other premises (Art. 4).

Provisions for placing under movement restrictions premises on which are pigs that are or have been exposed to infection.—An inspector may serve a notice (Form B in the First Schedule) on the occupier of any premises to which he has reason to believe that swine fever may be spread or on which he has reason to believe that there is, or has been within the past 28 days, a pig suffering from swine fever or exposed to infection, and thereupon the movement of pigs into or out of such premises is subject to the restrictions contained in the notice, for such period, up to 28 days, as may be specified. A Form B Notice may be withdrawn at any time by the service of a Form C Notice. Copies of any notices served must be sent to the Ministry, the local authority and the chief officer of police of the area (Art. 5).

Disposal of carcasses.—A diseased or suspected carcase must be destroyed by the local authority, at their expense, as follows :—

- i—by burial in some proper place, by covering it with a sufficient quantity of quicklime or other disinfectant and with not less than six feet of earth ;
- ii—by burning it on the premises where the pig died or was slaughtered ;
- iii—by removal to some proper place and there buried, or destroyed by exposure to high temperature or by chemical agents.

Before burial the local authority must cause the skin of the animal to be so slashed as to be useless (Art. 6).

Digging up carcasses of pigs.—It is unlawful to dig up, except with the approval of the Minister, or permission in writing of an inspector of the Ministry, the carcase of any pig that has been buried (Art. 7).

Cleansing and disinfection by inspector.—An inspector of the Ministry may cause to be cleansed and disinfected at the expense of the Ministry any building, shed, outhouse, yard, sty or other place which has been used for a pig affected with or suspected of being affected with swine fever, and any utensil, pen, hurdle, vehicle, litter, crate, box, hamper, sack, rope, net or other thing used for or about the pig or any dung of such pig, and may also cause any foodstuffs on such premises used for pigs to be sterilised. Alternatively, the inspector may serve a notice on the occupier or owner of such building, etc., to do the necessary work of cleansing and disinfection (Art. 8).

Cleansing and disinfection of lairs, pig-dealers' premises, etc., used for pigs.—An inspector of the Ministry or of the local authority may serve a notice on the occupier of any building, etc., used for the temporary detention of pigs prior to sale, etc., requiring the cleansing and disinfection thereof, and the work must be

carried out in the manner prescribed in the notice, by the occupier at his expense. Unless otherwise directed in the notice the cleansing and disinfection must be carried out in the following manner :—

- i—the place or thing must, if the nature thereof so permit, be scraped and swept, and the scrapings and sweepings and all dung, sawdust, litter, and other matter must be effectually removed therefrom ; then
- ii—the place or thing must be thoroughly washed or scrubbed or scoured with water and then thoroughly coated or washed with an approved disinfectant ;
- iii—the scrapings and sweepings, and the dung, sawdust, litter and other matter removed under this Article must forthwith be burnt or otherwise destroyed, or, if destruction is not practicable, be well mixed with quicklime and be effectually removed from contact with pigs (Art. 9).

Cleansing and disinfection by castrators of pigs.—Any instrument used by a castrator for the purpose of castrating pigs must forthwith after being used be thoroughly washed with soap and water and then be disinfected or otherwise sterilised. After leaving premises on which he has castrated pigs, a castrator must thoroughly wash his hands with soap and water and his boots with an approved disinfectant (Art. 10).

Cleansing and disinfection of vehicles, crates, etc., used for conveyance of pigs from markets, etc.—Pigs exposed for sale in any market, etc., must not be placed in any van, etc., unless it has been cleansed and disinfected since it was last used for the conveyance of pigs. A local authority may carry out such cleansing of vehicles and may make a reasonable charge therefor, or may provide facilities for cleansing and disinfection of vehicles (Art. 11).

Powers of local authority in case of default.—Where any person fails to carry out work of cleansing and disinfection the local authority may, without prejudice to any proceedings in respect of such failure, carry out the work themselves and recover the costs incurred from the person in default (Art. 12).

Prohibition to expose or remove diseased or suspected pigs.—It is unlawful—

- (i) to expose a pig affected with or suspected of being affected with swine fever in a market, fairground, sale-yard, place of exhibition or other public or private place, where pigs are commonly exposed for sale or exhibition ; or
- (ii) to place such pig in a lair or other place adjacent to or connected with a market, fairground, sale-yard or place of exhibition, where pigs are commonly placed before or after exposure for sale or exhibition ; or
- (iii) to send or carry or cause to be sent or carried such pig or the carcase of such pig on a highway, road or lane, or railway, canal, river or inland navigation, or in a coasting vessel or by air ; or
- (iv) to lead, or drive or cause to be led or driven, such pig on a highway, road or lane ; or
- (v) to place or keep such pig on common or unenclosed land or in a field or place insufficiently fenced, or in a field adjoining a highway, road or lane, unless that field is so fenced or situated that pigs therein cannot in any manner come in contact with pigs passing along that highway, road or lane or grazing on the sides thereof ; or

- (vi) to graze such pig on pasture being on the sides of a highway, road or lane ; or
- (vii) to allow such pig to stray on a highway, road or lane, or on the sides thereof or on common or unenclosed land, or in a field or place insufficiently fenced (Art. 13).

Swine fever found in a market, railway station, grazing park or other like place or during transit.—Where in contravention of Article 13, *supra*, a pig is exposed, etc., in a market, etc., an inspector or other officer of a local authority must seize the pig and also all pigs in the market, etc., which have been exposed to infection, and forthwith report the seizure by telegram to the Ministry(*i*). The inspector must cause the pig or pigs to be moved to a suitable place for detention as provided by the Order, and he must serve a Form A Notice on the occupier of such premises. Any pig seized may be slaughtered at the request of the owner and for this purpose may be moved to a slaughterhouse in accordance with a licence granted by an inspector of the local authority, such licence being available for 12 hours only. The inspector must report all proceedings under this Article to the local authority, who in turn must notify the Ministry (Art. 14).

Food and water during detention.—Where a pig is detained under the Order, the inspector of the local authority must cause it to be supplied with food and water (Art. 15).

Return of pigs remaining on swine fever infected places.—The Ministry may require a local authority to forward a return showing the pigs remaining on swine fever infected places (Art. 16).

Keeping of registers by pig-dealers, castrators and owners of boars.—Every pig-dealer must keep a register of his transactions in the Form E prescribed in the First Schedule to the Order. Every castrator of pigs must keep a register showing the following particulars :—

- i—the date of each castration ;
- ii—the name and address of the owner or person in charge of the pigs ; and
- iii—The number and description of pigs castrated.

Every owner of a boar used for the service of sows other than his own, must keep a register showing—

- i—the date of each service ;
- ii—the description of the sow served ; and
- iii—the name and address of the owner of the sow.

The registers must be open for inspection by an inspector of the Ministry or of the local authority, and a local authority may supply registers for the purpose (Art. 17).

Regulations of local authority as to mode and time of entry of pigs into markets, etc.—In order to facilitate the examination of pigs entering a market by a veterinary inspector, the local authority may make regulations governing the mode and time of such entry (Art. 18).

Tuberculosis Order, 1938(*k*).—The following description of tuberculosis has been issued by the Ministry(*l*) :—

Definition.—A contagious disease caused by a microbe—the bacillus tuberculosis.

(*i*) See note (*v*), *ante*, p. 502.

(*l*) See note (*v*), *ante*, p. 502.

(*k*) S.R. and O., 1938, No. 165.

Animals affected.—Human beings and most species of mammals and birds are liable to tuberculosis. Amongst the domesticated animals, cattle, particularly dairy cows, and swine are frequently affected; sheep very rarely.

Symptoms.—Sometimes not characteristic, the disease being often of a mild, chronic nature. In advanced cases there is usually emaciation; when the lungs are affected there may be a chronic cough with disturbance of the respiratory function. In cows, lesions in connection with the udder are sometimes present. The udder, usually in one of the posterior quarters, becomes the seat of a hard swelling of slow but steadily progressive growth—the swelling is usually almost painless.

The milk from the affected quarter at first appears normal, then becomes thin and watery, and later becomes flaked. Microscopic examination of milk from the diseased quarter shows the presence of tubercle bacilli.

During life the existence of the disease may be detected by means of the tuberculin test.

Post-mortem.—The characteristic lesion caused by the tubercle bacilli is a particular form of degeneration called caseation. The tissue affected becomes converted into a cheesy mass. Nodules of varying size may be present in the lungs, liver, kidneys, in lymphatic glands in various parts of the body, in the uterus, udder, pleura, peritoneum, membranes of the brain, etc.

The provisions of the Tuberculosis Order, 1938, are as follows:—

Notice of disease.—Every person having in his possession or under his charge—

- i—any cow which is, or appears to be affected with tuberculosis of the udder, indurated udder or other chronic disease of the udder; or
- ii—any bovine animal(*m*) which is, or appears to be, affected with tuberculous emaciation; or
- iii—any bovine animal which is affected with a chronic cough and showing definite clinical signs of tuberculosis,

must notify the fact to a police constable or a veterinary inspector. Such person must isolate the animal on the premises and adopt the precautions with respect to milk set out in Article 2, *infra*. A veterinary surgeon in private practice must also notify animals suffering from any of the above forms of tuberculosis to a police constable or veterinary inspector. The constable receiving a notification of a case of tuberculosis as above, must notify a veterinary inspector of the Ministry and also an inspector of the local authority (Art. 1).

Detention and isolation of animals and precautions to be adopted with respect to milk.—On receiving a notification of tuberculosis in accordance with Article 1, *supra*, the inspector of the local authority must proceed to the premises where the animal is and forthwith serve a notice (Form A in the First Schedule to the Order), requiring the detention and isolation of the affected animal. A copy of the notice must be sent to the veterinary inspector of the Ministry and to the local authority. A veterinary inspector must serve a Form A Notice, sending a copy thereof to the local authority.

(*m*) "*Bovine animal*" means a bull, cow, ox, heifer or calf—Art. 14, Tuberculosis Order, 1938; S.R. and O., 1938, No. 165.

A Form A Notice must require the owner of the animal to detain and isolate it on the premises specified in the notice, and in the case of a cow the milk⁽ⁿ⁾ produced by it must not be mixed with other milk until the cow has been examined by a veterinary inspector and until a Form B Notice has been served by such inspector, withdrawing the Form A Notice. A Form A Notice remains in force until the animal concerned has died, or has been slaughtered under the Order, or a Form B Notice is served (Art. 2).

Examination of animals, etc.—Where there are reasonable grounds^(o) for suspecting that there is an animal suffering from one of the above forms of tuberculosis on any premises, a veterinary inspector must examine the animal and any other bovine animal on such premises which he considers it desirable to examine to ascertain whether any of such animals are affected with tuberculosis. A veterinary inspector has the necessary power of entry on to premises for the purpose of examination of bovines. If none of the animals is affected with tuberculosis the inspector must serve a Form B Notice (Art. 3).

Slaughter of diseased animals.—If a veterinary inspector discovers a diseased animal he must, after giving notice in writing (Form C in the First Schedule) to the owner thereof, cause the animal to be slaughtered, provided that the owner may appeal to the Minister and the slaughter must be deferred until a special authority is issued by the Minister. If the value of the animal exceeds £50 the special authority of the Minister is required (Art. 4).

Post-mortem examination of slaughtered animals.—Immediately slaughter takes place, the veterinary inspector must examine the carcase and the owner of the animal is entitled to be present. The inspector must give a certificate to the owner, in the Form D in the First Schedule, showing the result of the examination (Art. 5).

Compensation.—Compensation is payable to the owner of an animal slaughtered on account of tuberculosis, as follows :—

- i—where the animal is found not to be suffering from tuberculosis, the market value of the animal, plus twenty shillings ;
- ii—where the animal is found to be suffering from tuberculosis, not being advanced tuberculosis, a sum equal to three-fourths of the market value of the animal, or the sum of thirty shillings, whichever sum is the greater, after deducting from such sum one-half of the reasonable costs of any valuation of the animal ;
- iii—where the animal is found to be suffering from advanced tuberculosis, a sum equal to one-fourth of the market value of the animal, or the sum of thirty shillings, whichever sum is the greater, after deducting from such sum one-half of the costs of any valuation.

For the purposes of determining the amount of compensation payable, an animal is deemed to have been affected with *advanced tuberculosis*—

- (a) when there is miliary tuberculosis of both lungs ; or

(n) " Milk " includes cream and separated or skimmed milk ; *ibid.*

(o) As a result of the bacteriological examination of samples of milk, see *ante*, p. 162.

- (b) when diffuse tuberculous lesions are present on the pleura and peritoneum; or
- (c) where the infection of lymphatic glands is sufficient to indicate that disease is widespread; or
- (d) where, in addition to the presence of tuberculous lesions in the respiratory and digestive tracts, there are also lesions present in the substance or membranes of any two of the following:—spleen, kidney, udder, any part of the reproductive system and any part of the central nervous system(*p*) (Art. 6).

Valuation for compensation.—The market value of an animal prior to slaughter under the Order, is obtained by agreement between the owner and the Ministry (through the veterinary inspector) or, failing agreement, by a valuer appointed by the Minister or by the President of the Auctioneers' and Estate Agents' Institute. The market value means the price which might reasonably have been obtained from a purchaser in the open market who had no knowledge of the existence or suspected existence in the animal of the symptoms of disease, except such knowledge thereof as might reasonably have been obtained by inspection of the animal (Art. 7).

Suspected animals in market, fairs and sales.—A veterinary inspector may require by notice served on the owner the removal from a market, etc., of any animal suspected to be suffering from one of the forms of tuberculosis specified in Article 1, *supra*. The animal may be moved to the premises from which it came or to a slaughterhouse. If slaughtered no compensation is payable (Art. 8).

Cleansing and disinfection.—If required by a veterinary inspector by notice in writing, the occupier of premises on which there has been an affected animal, must cleanse and disinfect the premises at his own expense. A copy of any such notice must be sent by the veterinary inspector to the local authority (Art. 9).

Prohibition of importation of diseased animals.—The landing in Great Britain of an imported animal which is or appears to be an affected animal or which is or appears to be affected with indurated udder or other chronic disease of the udder is prohibited (Art. 10).

MISCELLANEOUS ORDERS.

Warble Fly (Dressing of Cattle) Order, 1936(*q*), requires every person having in his possession any cattle which are visibly infested with the maggot of the warble fly (*hypoderma bovis* or *hypoderma lineatum*) to cause the infested cattle to be dressed with a dressing prepared in accordance with the speci-

(*p*) Compare with the definition of "generalised tuberculosis" in Memo. 62/Foods, in relation to meat inspection, see *ante*, p. 246.

(*q*) S.R. and O., 1936, No. 71; as amended by Warble Fly (Dressing of Cattle) of 1936 Amending Order and S.R. and O., 1940, No. 345—the operation of these three Orders is suspended until further notice by the Warble Fly (Dressing of Cattle) (Suspension) Order, 1942; S.R. and O., 1942, No. 318.

fication laid down in the Schedule to the Order(r) at intervals of not less than 27 nor more than 32 days between the dressings, commencing in each year between the 15th and 22nd days of March or as soon thereafter as the maggots appear under the skin on the backs of the cattle; or cause the ripe maggots to be squeezed out from the backs of the infested cattle or removed by other mechanical means and effectively destroyed, such process to commence in each year between the dates mentioned above or as soon thereafter as the maggots have reached the stage at which they can be so removed, and to be repeated at such intervals not exceeding ten days as may be necessary to prevent the escape of live maggots (Art. 1).

The local authority may grant exemptions in certain cases where the cattle are grazing on common, unenclosed, marsh or hill lands. A copy of the exemption granted by a local authority must be sent forthwith to the Secretary of the Ministry. The Minister may revoke an exemption if he considers it desirable to do so (Art. 2).

Labels must be affixed to containers of preparations intended as dressing for use for the purposes of the Order, which must contain full directions for dilution and use, and certifying that the dressing prepared as directed is in accordance with the specifications laid down in the Schedule to the Order (Art. 4).

Diseases of Animals (Disinfection) Order, 1936(s).—The various Diseases of Animals Orders summarised in the preceding pages refer to the use of "*approved disinfectants*," which is defined in this Order as meaning—

(a) standard phenol; or

(b) any disinfectant approved for the time being by the Minister for use for the purpose of this Order,

provided that the container is labelled in accordance with the provisions of Article 3 of the Order. Whenever standard phenol is used as the approved disinfectant, the dilution must be in the proportion of one part of standard phenol to nineteen parts of water (Art. 2).

Labels to be affixed to approved disinfectants.—Every receptacle containing an approved disinfectant must, before being sold, etc., be clearly and distinctly marked by the manu-

(r) The dressing should be prepared immediately before use by diluting with water a preparation, in powder form, containing powdered derris root. The directions for the dilution of the preparation should be such that each gallon of dressing produced should contain—

(a) either one and a half ounces of derris resins or half an ounce of rotenone; and also

(b) four ounces of soap which may be added at the time of dilution or may be incorporated in the preparation in powder form; S.R. and O., 1936, No. 71; Schedule.

(s) S.R. and O., 1936, No. 191.

facturer or vendor thereof, with a label in a form approved by the Minister, stating the prescribed dilution at which the disinfectant is required to be used for the purposes of the Order, and certifying either that the disinfectant consists of standard phenol or that the contents of the receptacle are of the same quality and composition as the sample submitted to the Government Chemist for examination, upon which the Minister's approval is based (Art. 3).

Sampling of disinfectants.—An inspector of the Ministry or of the local authority may take samples of approved disinfectants, and the person from whom the sample is obtained must supply the inspector with all such particulars as may be reasonably required as to the name and composition of the disinfectant (Art. 4).

Movement of Animals (Record) Order, 1925(t).—In order to facilitate the tracing of the movement of animals in cases of outbreaks of scheduled diseases, this Order requires every person who moves animals to or from any premises to keep a record in the prescribed form, giving the necessary particulars of the movement of each animal.

The prescribed form of record is as follows :—

Movement of Animals (Records) Order of 1925.

Form of Record.

Name and full address of person keeping this record :

Date of movement.	Number and character of animals.	Premises from which moved (including market, sale-yard, or fair) <i>and/or</i> name and address of person from whom delivery was taken. <i>N.B.—Both these particulars are to be entered if available.</i>	Premises to which moved (including market, sale-yard or fair) <i>and/or</i> name and address of person taking delivery. <i>N.B.—Both of these particulars are to be entered if available.</i>

Every entry in a record must be made in ink or indelible pencil within 36 hours after the movement of the animals, and the record must be kept for a period of 12 months from the date of movement. A local authority may supply record forms for recording the movement of animals.

The Transit of Animals Order, 1927(*u*), deals mainly with the protection of animals during transit by road, rail or water ; the cleansing and disinfection of railway trucks, road vehicles and vessels and the keeping of records in respect of the movement of animals by certain classes of road vehicles. Local authorities are responsible for enforcing the provisions relating to the cleansing and disinfection of vehicles (1931, Art. 1) and records of stock carried by road vehicles (1931, Art. 4).

TUBERCULOSIS (ATTESTED HERDS) SCHEME.

With a view to the eradication of tuberculosis from herds, the Minister was empowered to make special payments to owners(*v*), and in accordance with these provisions, made the Tuberculosis (Attested Herds) Scheme, 1938(*w*), a summary of which is as follows :—

MINISTRY OF AGRICULTURE AND FISHERIES.

Tuberculosis (Attested Herds) Scheme, 1938.

(Section 20 of the Agriculture Act, 1937(*v*), empowers the Minister of Agriculture and Fisheries, with the approval of the Treasury, to encourage the establishment in Great Britain of herds officially certified to be free from tuberculosis. The Tuberculosis (Attested Herds) Scheme, 1938, came into operation on 1st July, 1938, and provided, *inter alia*, for the payment of a bonus to the owners of herds entered in the Register of Attested Herds. *Paragraph 7 of the Scheme, which details the financial assistance for tuberculin testing prior to application of a Certificate of Attestation and of supervised herds, and paragraphs 13, 14 and 15, relating to the payment of bonus to owners of attested herds, do not now apply to herds which were not supervised or attested on the 30th June, 1944.*)

Herds eligible for official test.—When an owner of a herd applies to the Minister for an official tuberculin test with a view to the issue of a Certificate of Attestation, he must satisfy the Minister that the management of the herd and the condition in which it is kept are satisfactory, and that he will be able to observe the Rules applicable to Attested Herds specified in the First Schedule to the Scheme (see *infra*) ; he must produce a certificate of a veterinary surgeon showing that the herd has been subjected to the tuberculin test and that on the last two tests, no reactor was discovered, provided that there must be an interval between the tests of not less than 60 days and not more than 12 months and that both tests must have been carried out within twelve months of the date of the application ; and he must give an undertaking in writing that he will observe the Rules laid down by the Minister which are applicable to Attested Herds, and that pending the decision on his application, no cattle will be moved on to his premises without the consent of the Minister.

(*u*) S.R. and O., 1927, No. 289 ; as amended and extended by S.R. and O., 1931, No. 750 ; and S.R. and O., 1939, No. 501.

(*v*) Sect. 20, Agriculture Act, 1937 ; 30 Halsbury's Statutes 61.

(*w*) 16th June, 1938, as amended in June, 1939.

Rules to be observed in the case of Attested Herds.—The following Rules must be observed by owners of herds in respect of which a Certificate of Attestation has been issued :—

- 1—*Records.*—Accurate records must be kept showing all cattle comprising the Attested Herd, giving breed, age, sex and marking, and the name of the animal, if any ; all births and deaths of cattle on the premises, including cattle slaughtered ; and all bovine animals moved on to or off the premises, with the addresses from or to which the cattle were moved, the name of the vendor or purchaser, and, if available, the date of movement and for what purpose. A monthly return, in the prescribed form, showing all changes in the composition of the herd during the month, must be sent to the Minister.
- 2—*Marking.*—Every animal in the Attested Herd must be marked in manner approved by the Minister.
- 3—*Regulation of movement of cattle on to and from the premises of an Attested Herd.*—Rules are laid down governing the movement of cattle. Generally movement is prohibited except by written permit of the Minister. The general conditions applicable in all cases are set out in Rule 4 of the Schedule to the Scheme :—

- i—during movement the animal must not be allowed to come into contact with any other cattle not being moved with a similar permit, nor with any swine ;
- ii—any vehicle in which the animal is conveyed must be cleansed and disinfected in the prescribed manner *before* the animal is placed in it ; and
- iii—if it is found necessary to water the animal during transit, water must be supplied in a clean bucket direct from a tap and not from a water trough.

Special conditions are laid down with respect to the movement of animals in the following circumstances :—

- (a) from one Attested Herd to another ;
 - (b) from an Attested Herd to a Supervised Herd ;
 - (c) to an Attested Herd direct from the Channel Islands ;
 - (d) to or from a place of sale ;
 - (e) to an Attested Herd from a Supervised Herd or from a herd (not being an Attested Herd) licensed to produce Tuberculin Tested Milk ;
 - (f) to or from an Agricultural Show ;
 - (g) to an Attested Herd from premises other than those specified in paragraphs (a) to (f) above ; and
 - (h) for breeding purposes.
- 4—*Fences.*—All fences dividing the premises specified in the Certificate of Attestation from adjoining land must be maintained to the satisfaction of the Minister, in such a condition as to prevent the infection of the Attested Herd by cattle on adjoining land.
 - 5—*Use of milk, etc., for feeding animals.*—No milk or dairy by-product may be brought on to the premises for feeding to bovine or other animals except direct from the premises of another Attested Herd unless such milk or by-product has been converted into powder form or is boiled or pasteurised.

- 6—*Consent of Minister to unofficial tuberculin tests.*—The tuberculin test may not be applied to an animal in the Attested Herd without the approval of the Minister.
- 7—*Vaccination.*—No animal may be vaccinated against tuberculosis during the period of operation of the Certificate of Attestation, but animals may be vaccinated against abortion provided the vaccine used is "S.19 (Weybridge)."
- 8—*Entry and examination by Inspector.*—An Inspector of the Minister must be given all reasonable facilities for entry to premises and the examination of animals in the Attested Herd, and the owner must furnish the Inspector with all information as may reasonably be required by him for the purposes of the Scheme.

Official Tests.—If the requirements with respect to herds eligible for official tests are complied with satisfactorily, the official test will be applied to all animals, including calves, in the herd not earlier than 60 days from the date of the second of the two tests applied by the veterinary surgeon employed by the owner.

Award of Certificate in a case where no reactors are disclosed at the first official test.—If there are no reactors at the first official test, a Certificate of Attestation will be issued and the herd entered in the Register of Attested Herds.

If official test discloses reactors—Supervised Herds.—If, on the other hand, any reactor is discovered at the first official test, the following procedure applies:—

- (a) the owner of the herd must observe the Rules specified in the Second Schedule to the Scheme, and the herd will be known as a Supervised Herd ;
- (b) the reactors must be immediately isolated and disposed of by the owner and the premises disinfected in the prescribed manner ;
- (c) the non-reactors must be submitted to a further official test, to take place at a date not earlier than 60 days from the date of the completion of the disinfection of the premises ;
- (d) if no reactor is discovered as the result of the re-test, a Certificate of Attestation will be issued ;
- (e) if a reactor is discovered on the first re-test, the procedure will be repeated a second, and if a further reactor is discovered, a third time, and if on either occasion, no reactor is revealed, a Certificate of Attestation will be issued ; and
- (f) if any reactor is discovered at the third re-test, the application for a Certificate of Attestation will be refused.

Where, after four official tests a Certificate of Attestation is refused and the herd requalifies for an official test in accordance with the provisions of the Scheme, only one official test will be made and if a reactor is discovered, the application will be refused.

Tuberculin tests.—All official tests are carried out without cost to the owner of the herd, and the Minister may if he thinks fit, cause an official test to be made of all or any of the animals in an Attested Herd. If any reactor is discovered the procedure outlined above in the case of a herd in respect of which an application for a Certificate of Attestation is made, will be carried out. If reactors continue to be found at the fourth test, the Certificate will be cancelled and the herd removed from the Register of Attested Herds. In order to prevent the infection of animals in the herd from swine, the Minister may require the owner to

submit such swine to the tuberculin test at his own expense and any reactors must be disposed of immediately and the premises disinfected.

Disinfection of premises.—After the removal of reacting cattle or swine, the premises must be disinfected in accordance with the rules laid down in the Scheme.

Continuance in force of Certificate of Attestation.—A Certificate of Attestation remains in force until surrendered by the owner or revoked by the Minister. A Certificate may be revoked by the Minister at any time, by due notice in writing, if he is of opinion that the owner of the herd has failed to observe the conditions prescribed with respect to Attested Herds.

CHAPTER 22.

PHARMACY AND POISONS.

The law relating to pharmacy and poisons is contained in the Pharmacy and Poisons Act, 1933(*a*)—in this chapter referred to as “ the Act of 1933 ”—which imposes certain duties on local authorities, but such authorities are not concerned with Part I of the Act, which deals with pharmacy, nor with the sale of poisonous drugs in Part I of the Poisons List (see *post*, p. 549), both of which are dealt with by the Pharmaceutical Society of Great Britain(*b*) and the statutory committee which has been set up in accordance with the provisions of the Act(*c*).

The Act of 1933 was framed following the Report of a Departmental Committee which was appointed in 1926(*d*), who summarised their proposals as follows :—

- (i) to simplify the law by distinguishing between pharmacy and poisons ;
- (ii) to strengthen the representative character and the disciplinary powers of the Pharmaceutical Society of Great Britain in their relations to the profession of pharmacy ;
- (iii) to disencumber the statute law of detail :
 - (a) by eliminating the statutory “ Poisons Schedule ” ;
 - (b) by enlarging the powers of making rules as to the sale, supply, storage, transport, etc., of poisons ; and
 - (c) by providing one procedure for the recovery of all penalties ;
- (iv) to attain elasticity and efficiency in the control of an authoritative list of poisons and in the making of rules as to the sale, supply, etc., of poisons, by handing over these functions to a new representative body acting under the Secretary of State ;
- (v) to secure to the public reasonable facilities for the supply of poisons for agricultural, horticultural, industrial and sanitary purposes, while keeping those who supply them under adequate control.

To achieve the first of the above the Act is divided into two main parts—Part I deals with pharmacy and Part II with poisons.

(*a*) 26 Halsbury's Statutes 562.

(*b*) 17 Bloomsbury Square, London, W.C.

(*c*) Sect. 6.

(*d*) Report of the Departmental Committee on the Poisons and Pharmacy Acts. Cmd. 3512. March, 1930, H.M.S.O.

LOCAL AUTHORITIES FOR THE ENFORCEMENT OF
THE ACT OF 1933.

The authorities charged with the enforcement of those sections of the Act of 1933 to be administered by local authorities are as follows :—

- (i) as respects the City of London, the Common Council ;
- (ii) as respects the remainder of the administrative county of London, the council of the metropolitan boroughs ;
- (iii) county borough councils ; and
- (iv) elsewhere, county councils(*e*).

The Home Office have issued memoranda dealing with the provisions relating to pharmacy and poisons which concern local authorities (*f*).

INSPECTORS OF LOCAL AUTHORITIES.

Appointment.—It is the duty of every local authority, by means of inspection and otherwise, to take all reasonable steps to secure compliance with the provisions of Part II of the Act of 1933 and of the rules made under section 23 (see *post*, p. 553) so far as they relate to poisons included in Part II of the Poisons List (see *post*, p. 552) and for that purpose to appoint inspectors. An inspector appointed by the Pharmaceutical Society may, with the consent of the Society, be appointed by a local authority to be also an inspector for that authority(*h*). It should be noted that where an authority appoint an inspector of the Society to act as the inspector to the local authority, such person occupies a dual position and he will report to the Society in respect of the enforcement of the Act for which the Society is responsible, and to the local authority in respect of matters within their province.

The class of officer appointed by local authorities for the purposes of the Act of 1933 varies considerably, as with sampling officers under the Food and Drugs Act, 1938 (see *ante*, p. 51). In some areas sanitary inspectors are appointed, in others, officers of the public control department, inspectors of weights and measures, etc. Generally it is advantageous for the sampling officer to act as inspector for the purposes of the Act of 1933. In any case, the person should be appointed by resolution of the local authority and be provided with a properly

(*e*) Sect. 29, Pharmacy and Poisons Act, 1933 ; 26 Halsbury's Statutes 583.

(*f*) Memo. Poisons, No. 1 (Shopkeepers).

 Memo. Poisons, No. 2 (Wholesalers).

 Memo. Poisons, No. 3 (Practitioners and Hospitals).

 Memo. Poisons, No. 4 (Agriculture and Horticulture).

(*h*) Sect. 25(5), Pharmacy and Poisons Act, 1933 ; 26 Halsbury's Statutes 581.

authenticated form of appointment. As to the appointment of officers generally, see the author's "*Sanitary Administration*" (i).

Power of entry.—An inspector of a local authority has power of entry, *at all reasonable times*, on any premises on which any person whose name is entered in a local authority's list carries on business, and any premises on which the inspector has reasonable cause to suspect that a breach of the law has been committed in respect of any poisons included in Part II of the Poisons List, and in either case he has power to make such examination and inquiry and to do such other things, including the taking, on payment thereof, of samples, as may be necessary for the purposes of the inspection(k). An inspector is not empowered to enter or inspect the premises, not being a shop, of a duly qualified medical practitioner, a registered dentist, or a registered veterinary surgeon(l).

The matters to which an inspector of a local authority should direct his attention, when inspecting listed premises where Part II poisons are sold, have been aptly summarised by Linstead(m) as follows :—

- 1—to satisfy himself that the name of the owner of a premises upon which poisons in Part II of the Poisons List are being sold has been entered upon the local authority's list ;
- 2—to ascertain that the address of the premises has been entered in the local authority's list, and that the current year's fees have been paid ;
- 3—to ascertain that any deputy who may have been appointed under Rule 14 is a responsible person, and that substances which contain Part II poisons and which are included in the First Schedule, are being sold by the listed seller himself or by one of the " responsible deputies " ;
- 4—to examine the Poisons Register and any written orders received for substances in the First Schedule, and to satisfy himself that the orders and the entries in the Register are in order ;
- 5—to inspect the storage arrangements ;
- 6—to satisfy himself that the requirements as to labelling and containers are being complied with ; and
- 7—where a listed seller of Part II poisons is carrying on a wholesale or similar business which includes the sale of Part I poisons in addition to the retail business in his shop, to satisfy himself that the former business is being carried on in premises which are not used for or in connection with the retail business.

Power to institute proceedings.—An inspector of a local authority has power, with the consent of the authority, to

(i) Second Edition, London, Butterworth & Co., Ltd., p. 34 *et seq.*

(k) Sect. 25(6), Pharmacy and Poisons Act, 1933 ; 26 Halsbury's Statutes 581.

(l) *Ibid*, sect. 25(10) ; 26 Halsbury's Statutes 582.

(m) Linstead, Hugh N. (1936). "*Poisons Law*," London, The Pharmaceutical Press, p. 56.

institute proceedings under the Act of 1933, before a court of summary jurisdiction in the name of the authority and to conduct any proceedings so instituted by him notwithstanding that he is not of counsel or a solicitor(*n*).

Penalty for obstructing inspector.—Any person who wilfully delays or obstructs an inspector in the exercise of any powers under the Act of 1933 or refuses to allow any sample to be taken, or fails without reasonable excuse to give any information which he is duly required to give, is liable, on summary conviction, to a fine not exceeding £5(*o*). It is an offence if a person conducting a business refuses to inform an inspector who is the owner of the business(*p*).

OFFENCES AND LEGAL PROCEEDINGS.

The offences with which local authorities are concerned are as follows :—

- 1—sale of any poison in Part II of the Poisons List by a person whose name and address are not entered in the list by the local authority(*q*) ;
- 2—sale of Part I poisons, by persons who are only entitled to sell Part II poisons ;
- 3—sale of poisons, the container of which is not properly labelled with the name of the poison, the name and address of the seller and the other prescribed information(*r*) ;
- 4—sale of any poison, other than ammonia, hydrochloric acid, nitric acid, potassium quadroxalate and sulphuric acid, except in a closed container as closed by the manufacturer or other person from whom the poison was obtained(*s*) ;
- 5—sale of any substance in the First Schedule to the Poisons Rules(*t*), unless the sale is effected by the shopkeeper or by a responsible deputy(*u*) ;
- 6—sale of arsenical and mercurial poisons, barium silicofluoride, nicotine and its salts, unless the purchaser is either (a) known to the shopkeeper to be a person to whom the poison may properly be sold, or (b) produce a certificate signed by a householder in the prescribed form, and the appropriate entry is made in the Poisons Book (see *post*, p. 562)(*v*) ;
- 7—sale of poisons other than from premises entered in the list kept by the local authority (*e.g.* hawking of poisons and sale in street) ;
- 8—obstruction of inspector of local authority(*w*) ; and
- 9—sale of poisons otherwise than in the prescribed type of container(*x*).

(*n*) Sect. 25(7), Pharmacy and Poisons Act, 1933 ; 26 Halsbury's Statutes 582. (o) *Ibid*, sect. 25(8) ; 26 Halsbury's Statutes 582.

(*p*) *Ibid*, sect. 25(9) ; 26 Halsbury's Statutes 582.

(*q*) *Ibid*, sect. 18(1)(b) ; 26 Halsbury's Statutes 574 ; and see *post*, p. 546.

(*r*) *Ibid*, sect. 18(1)(c) ; 26 Halsbury's Statutes 575.

(*s*) Rule 14(1), Poisons Rules, 1935 ; S.R. and O., 1935, No. 1239.

(*t*) S.R. and O., 1935, No. 1239. (u) *Ibid*, Rule 14(1).

(*v*) Sect. 18(2), Pharmacy and Poisons Act, 1933 ; 26 Halsbury's Statutes 575.

(*w*) *Ibid*, sect. 25(8) ; 26 Halsbury's Statutes 582.

(*x*) Rule 22, Poisons Rules, 1935 ; S.R. and O., 1935, No. 1239.

A person who acts in contravention of, or fails to comply with, any of the provisions of Part II of the Act of 1933 (except under subsection (8) of section 21 (see *post*, p. 547)), or any of the Poisons Rules, is liable, on summary conviction, to a fine not exceeding £50 and, in the case of a continuing offence, to a further fine not exceeding £10 for every day subsequent to the day on which he is convicted of the offence during which the contravention or default continues(y). It is no defence that the employee acted without the authority of the employer, and any material fact known to the employee is deemed to have been known to the employer(z).

Legal proceedings may be instituted by a local authority within the period of twelve months after the commission of the offence, or such extended period as may be directed by the Secretary of State(a). Under the Summary Jurisdiction Acts the normal period for the institution of legal proceedings is six months.

A document purporting to be a certificate signed by a public analyst(b) or person appointed by the Secretary of State to make analyses for the purposes of the Act of 1933, stating the result of an analysis made by him must be admissible in any proceedings under the Act as evidence of the matters stated therein, but either party may require the person by whom the analysis was made to be called as a witness(c).

LISTED SELLERS OF POISONS.

Registration.—A registered pharmacist(d) is alone entitled to sell the poisons contained in Part I of the Poisons List, but certain other persons may sell poisons in Part II of the Poisons List, in accordance with the provisions of section 21 of the Act of 1933, *infra*.

Section 21, Pharmacy and Poisons Act, 1933.—Certain persons other than authorised sellers of poisons to be entitled to sell poisons in Part II of the Poisons List.

- (1) Every local authority shall keep for the purposes of this Part of this Act a list of persons who, not being entitled to sell poisons included in Part I of the Poisons List, are, subject to the provisions of this Act, to be entitled to sell poisons included in Part II of the Poisons List, and shall, subject as hereinafter provided, enter in the list the name of any person who, having

(y) Sect. 24(1), Pharmacy and Poisons Act, 1933 ; 26 Halsbury's Statutes 580.

(z) *Ibid*, sect. 24(2) ; 26 Halsbury's Statutes 580.

(a) *Ibid*, sect. 24(3) ; 26 Halsbury's Statutes 580.

(b) As to appointment, powers and duties of public analysts, see Chapter 3, *ante*, p. 38.

(c) Sect. 24(5), Pharmacy and Poisons Act, 1933 ; 26 Halsbury's Statutes 580.

(d) Known as an "authorised seller of poisons"—sect. 29, Pharmacy and Poisons Act, 1933 ; 26 Halsbury's Statutes 583.

premises in the area of the authority, makes an application to the local authority in the form prescribed by rules to have his name entered in the list as a person entitled subject to the provisions of this Act to sell such poisons on those premises :

Provided that the local authority may refuse to enter in, or may remove from, the list the name of any person who fails to pay the fees prescribed by rules or who in the opinion of the authority is, for any sufficient reason relating either to him personally or to his premises, not fit to be on the list.

- (2) If any person is aggrieved by the refusal of the local authority to enter his name in the said list or by the removal of his name therefrom under this section, he may, in accordance with rules made for the purpose of this section by the Secretary of State, appeal against the refusal or removal to the court of quarter sessions for the county or borough in which his place of business is situate.
- (3) A local authority's list shall include particulars of the premises on which respectively the persons whose names are entered in the list are entitled to sell poisons included in the said Part II, and subject as aforesaid the said list shall be in the form prescribed by rules.
- (4) Every person shall pay to the local authority such fees as may be prescribed by rules in respect of—
 - (a) the entry of his name in the local authority's list ; and
 - (b) the making of any alteration in the local authority's list in relation to the premises on which he is entitled to sell ; and
 - (c) the retention of his name on the local authority's list in any year subsequent to the year in which his name is first entered therein.
- (5) If any person whose name is entered in a local authority's list is convicted before any court of any criminal offence which, in the opinion of the court, renders him unfit to have his name on the list, the court may, as part of the sentence, order his name to be removed from the list and direct that he shall, for such period as may be specified in the order, be disqualified for having his name entered in any local authority's list.
- (6) Every local authority's list shall be open at all reasonable times to the inspection of any person without fee.
- (7) In this section—

The expression " relating to him personally " means, in relation to a person being a body corporate, relating personally to the members of the board, or to the managers or other officers of the body corporate.

The expression " year " means a period of twelve months beginning on such date as the local authority may from time to time determine.

- (8) It shall not be lawful for any person whose name is entered in a local authority's list to use in connection with his business any title, emblem or description reasonably calculated to suggest that he is entitled to sell any poison other than a poison which he is under this Act entitled to sell, and if any person acts in contravention of this subsection he shall be liable on summary conviction, in respect of each offence, to a fine not exceeding twenty pounds, and, in the case of a continuing

offence, to a further fine not exceeding five pounds for every day subsequent to the day on which he is convicted of the offence during which the contravention continues.

A local authority are empowered to enter an authorised seller of poisons on the list of persons entitled to sell Part II poisons, who wishes to sell such poisons at any premises, other than those where he carries on his chemist's business, where neither poisons in Part I of the Poisons List nor drugs are sold, provided that the authority are entitled to refuse to enter in, or may remove from, the list the name of any person who fails to pay the fees prescribed (see *infra*), or who in the opinion of the authority is, for any sufficient reason relating either to him personally or to his premises, not fit to be on the list(e). If drugs are sold as well as Part II poisons, the applicant should, of course, be referred to the Pharmaceutical Society.

The form of application for entering a name on the local authority's list is prescribed in the Poisons Rules(f), together with the form of list to be kept by the authority(g).

Fees for registration.—The fees payable to the authority by every person whose name is entered in the list kept by that authority are—

- 1—in respect of the entry of his name in the list, a fee of 7s. 6d.
- 2—in respect of the making of any alteration in the list in relation to the premises on which he is entitled to sell, a fee of 1s.; and
- 3—in respect of the retention of his name on the list in any year subsequent to the year in which his name is first entered therein, a fee of 5s.(h).

In the case of a person whose name is entered or retained on the list as a person entitled to sell on more than one set of premises, the fees payable are increased—

- 1—in the case of the entry of his name, by the sum of 7s. 6d. for each additional set of premises on which he is entitled to sell; and
- 2—in the case of the retention of his name, by the sum of 5s. for each additional set of premises(h).

It should be noted that the local authority are bound to enter the name on the list, unless—

- 1—the person concerned fails to pay the fees prescribed; or
- 2—they are satisfied, for some reason relating to the applicant personally or his premises, that he is unfit to be on the list.

(e) Sect. 2, Pharmacy and Medicines Act, 1941; 34 Halsbury's Statutes 195.

(f) S.R. and O., 1935, No. 1239; Ninth Schedule (revised, August, 1946)

(g) *Ibid*, Tenth Schedule.

(h) *Ibid*, Rule 30.

Appeal against refusal to register.—An appeal against the refusal of a local authority to enter a name in the list, or its removal therefrom, may be made to quarter sessions and the rules⁽ⁱ⁾ governing such appeals provide that an appeal shall be made in accordance with the provisions of the Quarter Sessions Act, 1849, to the next practicable court of quarter sessions having jurisdiction in the county or borough in which the premises of the applicant are situate and held not less than 21 clear days after notification of the refusal or removal is given to him by the local authority. The notice of appeal must be given to the clerk of the peace and to the local authority.

It should be noted that a person may only sell poisons in Part II of the list from premises included in the list. Hence the sale of listed poisons by hawkers is illegal, and the sale of poisons from automatic machines is expressly prohibited^(k).

Misuse of titles.—A listed seller of Part II poisons may not use any letter, emblem or description which might suggest that he is entitled to sell poisons other than those in Part II of the List which he is entitled under the Act of 1933 to sell. The penalty for an offence is £20, and in the case of a continuing offence a further fine of £5^(l).

Sale of Part II poisons by authorised sellers of poisons^(m).—An authorised seller of poisons may not sell a poison included in the First Schedule to the Rules (see *post*, p. 557) which is a poison included in Part II of the Poisons List (*i.e.* arsenical poisons, barium carbonate, barium silicofluoride, mercuric chloride, mercuric iodide and nicotine), unless the sale is effected by, or under the supervision of, a registered pharmacist⁽ⁿ⁾.

THE POISONS LIST.

The Poisons List^(o), as amended^(p), is as follows :—

Part I.

Acetanilide ; alkyl acetanilides.

Alkali fluorides other than those specified in Part II of this List.

Alkaloids, the following ; their salts, simple or complex :

Acetyldihydrocodeinone ; its esters.

(i) Poisons (Appeals to Quarter Sessions) Rules, 1936 ; S.R. and O., 1936, No. 142.

(k) Sect. 22, Pharmacy and Poisons Act, 1933 ; 26 Halsbury's Statutes 578.

(l) *Ibid*, sect. 21(8) ; 26 Halsbury's Statutes 578.

(m) *Ibid*, sect. 29 ; 26 Halsbury's Statutes 583.

(n) Rule 13, Poisons Rules, 1935 ; S.R. and O., 1935, No. 1239.

(o) Poisons List Confirmation Order, 1935 ; S.R. and O., 1935, No. 1238 ; 28 Halsbury's Statutes 135

(p) Poisons List (Amendment) Order, 1937 ; S.R. and O., 1937, No. 1029 ; S.R. and O., 1938, No. 1547 ; and S.R. and O., 1940, No. 453.

- Aconite, alkaloids of.
- Apomorphine.
- Atropine.
- Belladonna, alkaloids of.
- Benzoylmorphine.
- Benzylmorphine.
- Brucine.
- Calabar bean, alkaloids of.
- Coca, alkaloids of.
- Cocaine.
- Codeine.
- Colchicine.
- Coniine.
- Cotarnine.
- Curarine.
- Diacetylmorphine.
- Dihydrocodeinone ; its esters.
- Dihydrohydroxycodeinone ; its esters.
- Dihydromorphine ; its esters.
- Dihydromorphinone ; its esters.
- Ecgonine ; its esters.
- Emetine.
- Ephedra, alkaloids of.
- Ergot, alkaloids of.
- Ethylmorphine.
- Gelsemium, alkaloids of.
- Homatropine.
- Hyoscine.
- Hyoscyamine.
- Jaborandi, alkaloids of.
- Lobelia, alkaloids of.
- Morphine.
- Papaverine.
- Pomegranate, alkaloids of.
- Quebracho, alkaloids of, other than the alkaloids of red quebracho.
- Sabadilla, alkaloids of.
- Solanaceous alkaloids not otherwise included in this List.
- Stavesacre, alkaloids of.
- Strychnine.
- Thebaine.
- Veratrum, alkaloids of.
- Yohimba, alkaloids of.
- Allylisopropylacetylurea.
- Amidopyrine ; its salts.
- Amino-alcohols, esterified with benzoic acid, phenylacetic acid, phenylpropionic acid, cinnamic acid or the derivatives of these acids.
- Amyl nitrite.
- Antimony, chlorides of ; oxides of antimony ; sulphides of antimony ; antimonates ; antimonites ; organic compounds of antimony.
- Arsenical substances, the following (except those specified in Part II of this List) : arsenic, halides of, oxides of arsenic ; arsenates ; arsenites ; organic compounds of arsenic.
- Barbituric acid, its salts ; derivatives of barbituric acid, their salts ; compounds of barbituric acid, its salts, its derivatives, their salts, with any other substances.
- Barium, salts of, other than barium sulphate and the salts of barium specified in Part II of this List.

Butyl chloral hydrate.

Cannabis (the dried flowering or fruiting tops of *Cannabis sativa* Linn.) ; the resin of cannabis ; extracts of cannabis ; tinctures of cannabis ; cannabin tannate.

Cantharidin ; cantharidates.

Chloral formamide.

Chloral hydrate.

Chloroform.

Creosote obtained from wood.

Croton, oil of.

Digitalis, glycosides of ; other active principles of digitalis.

Dinitrocresols ; dinitronaphthols ; dinitrophenols ; dinitrothymols.

Elaterin.

Ergot (the sclerotia of any species of *Claviceps*) ; extracts of ergot ; tinctures of ergot.

Erythrityl tetranitrate.

Glyceryl trinitrate.

Guanidines, the following : polymethylene diguanidines, diparaanisylphenetyl guanidine.

Hydrocyanic acid ; cyanides ; double cyanides of mercury and zinc.

Insulin.

Lead acetates ; compounds of lead with acids from fixed oils.

Mannityl hexanitrate.

Mercury, oxides of ; nitrates of mercury ; mercuric ammonium chlorides ; potassio-mercuric iodides ; mercuric oxycyanides ; mercuric thiocyanate.

Metanitrophenol ; orthonitrophenol ; paranitrophenol.

Nux vomica.

Opium.

Orthocaine ; its salts.

Ouabain.

Oxalic acid ; metallic oxalates other than potassium quadroxalate.

Oxycinchoninic acid, derivatives of ; their salts ; their esters.

Para-amino-benzoic acid ; esters of ; their salts.

Phenetidylphenacetin.

Phenols (any member of the series of phenols of which the first member is phenol and of which the molecular composition varies from member to member by one atom of carbon and two atoms of hydrogen) except in substances containing less than 60 per cent., weight in weight, of phenols ; compounds of phenol with a metal, except in substances containing less than the equivalent of 60 per cent., weight in weight, of phenols.

Phenylcinchoninic acid ; salicylcinchoninic acid ; their salts ; their esters.

Phenylethylhydantoin ; its salts ; its acyl derivatives ; their salts.

Phosphorus, yellow.

Picric acid.

Picrotoxin.

Pituitary gland, the active principles of.

Savin, oil of.

Strophanthus ; glycosides of strophanthus.

Sulphonals ; alkyl sulphonals.

Suprarenal gland, the active principles of ; their salts.

Thallium, salts of.

Thyroid gland, the active principles of ; their salts.

Tribromethyl alcohol.

Part II.

Ammonia.

Arsenical substances, the following :—

Arsenic sulphides.
 Arsenious oxide.
 Calcium arsenates.
 Calcium arsenites.
 Copper acetoarsenites.
 Copper arsenates.
 Copper arsenites.
 Lead arsenates.
 Potassium arsenites.
 Sodium arsenates.
 Sodium arsenites.
 Sodium thioarsenates.

Barium, salts of, the following :—

Barium carbonate.
 Barium silicofluoride.

Formaldehyde.

Hydrochloric acid.

Hydrofluoric acid ; potassium fluoride ; sodium fluoride ; sodium silicofluoride.

Mercuric chloride ; mercuric iodide ; organic compounds of mercury.

Nicotine ; its salts.

Nitric acid.

Nitrobenzene.

Phenols as defined in Part I of this List in substances containing less than 60 per cent., weight in weight, of phenols ; compounds of phenol with a metal, in substances containing less than the equivalent of 60 per cent., weight in weight, of phenols.

Phenylene diamines ; toluene diamines ; their salts.

Potassium hydroxide.

Potassium quadroxalate.

Sodium hydroxide.

Sulphuric acid.

The forms in which Part II poisons are usually sold in retail shops, other than chemists' shops, are as follows :—

Ammonia	.. ..	" Household ammonia " for cleaning.
Arsenical substances	..	Sheep-dips, horticultural sprays, insecticides, etc.*
Mercuric substances	..	Seed and bulb dressings ; insecticides.
Nicotine	.. ..	Insecticides.
Nitrobenzine	.. ..	Insecticides.
Phenols	.. ..	" Carbolic " disinfectants, sanitary fluids, sheep-dips, insecticides.
Barium carbonate	..	Rat and mouse poisons.
Phenylene and toluene diamines	.. ..	Hair dyes.

Formaldehyde, hydrochloric acid (spirits of salts), nitric acid, potassium hydroxide (caustic potash), potassium quadroxalate (salts of lemon), sodium hydroxide (caustic soda) and sulphuric acid are sold as such for various household purposes. Caustic soda is frequently the principal constituent of paint removers(*q*).

(*q*) Home Office Memorandum, Poisons No. 1 (Shopkeepers). 1936, H.M.S.O., para. 5, p. 4.

POISONS RULES.

The Secretary of State is empowered by section 23 of the Act of 1933, *infra*, to make rules governing the sale of poisons.

Section 23, Pharmacy and Poisons Act, 1933.—Power of Secretary of State to make rules.

- (1) The Secretary of State may, after consultation with or on the recommendation of the Poisons Board, make rules with respect to any of the following matters or for any of the following purposes :—
- (a) the manufacture of pharmaceutical preparations containing poisons ;
 - (b) the sale, whether wholesale or retail, or the supply of poisons, by or to any persons or classes of persons and in particular but without prejudice to the generality of the foregoing provisions—
 - (i) for regulating or restricting the sale or supply of poisons by persons whose names are entered in a local authority's list for prohibiting the sale of any specified poison or class of poisons by any class of such persons ; and
 - (ii) for prohibiting the sale by retail of poisons (being poisons in Part I of the Poisons List) except on a prescription duly given by a duly qualified medical practitioner, registered dentist or registered veterinary surgeon, and for prescribing the form and regulating the use of prescriptions given for the purpose of rules made under this paragraph ; and
 - (iii) for dispensing with or relaxing with respect to poisons any of the provisions contained in Part II of this Act relating to the sale of poisons ;
 - (c) the storage, transport and labelling of poisons ;
 - (d) the containers in which poisons may be sold or supplied ;
 - (e) the addition to poisons of specified ingredients for the purpose of rendering them readily distinguishable as poisons ;
 - (f) the compounding and dispensing of poisons ;
 - (g) the period for which any books required to be kept for the purposes of Part II of this Act are to be preserved ;
 - (h) the period for which any certificate given under Part II of this Act is to remain in force ;
 - (i) for requiring persons in control of the manufacture of pharmaceutical preparations containing poisons to be registered pharmacists or persons possessing the prescribed qualification in chemistry ;
 - (j) for prescribing anything which is by this Act to be prescribed by rules.
- (2) The power to make rules under this section with respect to poisons includes the power to make rules with respect to any class of poisons or any particular poison.
- (3) The Secretary of State may issue to the Poisons Board a direction that the power of the Board to make recommendations as to the making of rules with respect to the matters or for the purposes specified in paragraphs (a), (b)(i), (c), (d), (e), and (i) of subsection (1) of this section shall not be exercised

except after consultation with such body of persons as is specified in the direction, being a body which is, in his opinion, representative of persons engaged in the manufacture of poisons or preparations containing poisons, and the Board shall comply with any such direction.

The Secretary of State may, from time to time, revoke or vary any such direction, without prejudice to the issue of a new direction.

All rules must be laid before each House of Parliament for a period of 30 days(r).

In accordance with the powers contained in section 23, *supra*, the Secretary of State has made the Poisons Rules(s), in this chapter referred to as the "Poisons Rules," which came into operation on the 1st May, 1936, the main provisions of which are summarised below.

General exemptions from provisions of Act and Poisons Rules.—The following substances are generally exempt from the provisions of the Act and of the Poisons Rules :—

Adhesives ; anti-fouling compositions ; builders' materials ; ceramics ; distempers ; electrical valves ; enamels ; explosives ; fillers ; fireworks ; glazes ; glue ; lacquer solvents ; loading materials ; marking-inks ; matches ; motor fuels and lubricants ; paints other than pharmaceutical paints ; photographic paper ; pigments ; plastics ; polishes ; printers' ink ; propellants ; rubber ; varnishes.

The following special exemptions, applicable to poisons in Part II of the Poisons List, apply :—

Poison.	Substance or article in which exempted.
Nicotine	Tobacco.
Ammonia	Substances not being solutions of ammonia or preparations containing solutions of ammonia ; substances containing less than 5 per cent., weight in weight, of ammonia (NH ₃) ; refrigerators ; smelling bottles.
Arsenical poisons	Pyrites ores or sulphuric acid containing arsenical poisons as natural impurities.
Formaldehyde	Substances containing less than 5 per cent., weight in weight, of formaldehyde (H.CHO) ; photographic glazing or hardening solutions.

(r) Sect. 26, Pharmacy and Poisons Act, 1933 ; 26 Halsbury's Statutes 582.

(s) S.R. and O., 1935, No. 1239, as amended by S.R. and O., 1937, No. 1030 ; S.R. and O., 1938, No. 1548 ; and S.R. and O., 1940, No. 452.

Poison.	Substance or article in which exempted.
Hydrochloric acid	Substances containing less than 9 per cent., weight in weight, of hydrochloric acid (HCl).
Mercuric chloride	Batteries.
Mercuric chloride ; mercuric iodide ; organic compounds of mercury.	Dressings on seeds or bulbs.
Nitric acid	Substances containing less than 9 per cent., weight in weight, of nitric acid (HNO ₃).
Nitrobenzene.. ..	Substances containing less than 0·1 per cent. of nitrobenzene ; soaps containing less than 1 per cent. of nitrobenzene.
Phenols	Carvacrol ; coal-tar, crude or refined ; creosote obtained from coal-tar ; essential oils in which phenols occur naturally ; medicines containing less than 1 per cent. of phenols ; nasal sprays, mouthwashes, pastilles, lozenges, capsules, pessaries, ointments, or suppositories containing less than 2·5 per cent. of phenols ; smelling bottles ; soaps for washing ; solid substances containing less than 60 per cent. of phenols ; tertiary butyl-cresol ; thymol.
Phenylene diamines ; toluene diamines ; their salts.	Substances other than preparations for the dyeing of hair.
Potassium hydroxide ..	Substances containing less than 12 per cent. of potassium hydroxide ; accumulators ; batteries.
Sodium fluoride	Substances containing less than 3 per cent. of sodium fluoride as a preservative.
Sodium hydroxide	Substances containing less than 12 per cent. of sodium hydroxide.
Sodium silicofluoride ..	Substances containing less than 3 per cent. of sodium silicofluoride as a preservative.
Sulphuric acid	Substances containing less than 9 per cent., weight in weight, of sulphuric acid (H ₂ SO ₄) ; accumulators ; batteries ; fire extinguishers(<i>t</i>).

Restrictions of sales by shopkeepers.—Notwithstanding the restrictions imposed by section 20 of the Act of 1933(*u*)—which exempts certain sales by wholesale and sales to certain persons—it is not lawful for any shopkeeper to sell poisons(*v*) included in Part II of the Poisons List on any premises used or in connection with his retail business, unless either :—

- 1—he is an authorised seller of poisons and the sale is effected on premises duly registered(*w*) under Part I of the Act of 1933 ; or
- 2—his name is entered in a local authority's list, and the sale is effected on premises specified in that list as being premises on which he is entitled, subject to the provisions of the Act, to sell poisons included in Part II of the Poisons List(*x*).

Exemption of animal medicines.—The above provisions do not apply with respect to any medicine for the treatment of animals sold by a person carrying on business which comprises the manufacture of medicines for the treatment of animals, if the following requirements are complied with :—

- (a) a statement in writing signed by the owner of the business, or, in the case of a corporate body, on behalf of that body, stating the name of the business, the principal place where it is carried on, the name of the person in charge of the sale of the medicines, and the premises on which the medicines are to be sold must be furnished prior to the sale to the registrar of the Pharmaceutical Society ; and
- (b) the sale must be effected on the premises specified in the statement ; and
- (c) an inspector appointed under section 25 of the Act must be permitted at all reasonable times to enter the premises and be given all reasonable facilities to make such examination and inquiry and to do such other things (including the taking, on payment therefor, of samples) as may be necessary for ascertaining whether the provisions of the Act and of these Rules are being complied with(*y*).

Restriction of sale by listed sellers of Part II poisons.—No shopkeeper who is a listed seller of Part II poisons may sell—

- (a) any poison other than ammonia, hydrochloric acid, nitric acid, potassium quadroxalate and sulphuric acid, except in a closed container as closed by the manufacturer or other person from whom the poison was obtained ;
- (b) any substance included in the First Schedule to the Poisons Rules unless the sale is effected by himself or by a responsible deputy.

(*u*) 26 Halsbury's Statutes 576.

(*v*) "*Poison*" means a poison included in the Poisons List—sect. 29, Pharmacy and Poisons Act, 1933 ; 26 Halsbury's Statutes 583.

(*w*) Registration is carried out by the Pharmaceutical Society—sect. 12, Pharmacy and Poisons Act, 1933 ; 26 Halsbury's Statutes 571.

(*x*) Rule 3, Poisons Rules, 1935 ; S.R. and O., 1935, No. 1239, which applies sect. 18(1)(b), Pharmacy and Poisons Act, 1933.

(*y*) *Ibid*, Rule 4.

The expression "responsible deputy" means a person nominated as a deputy on the seller's form of application for entry as a listed seller of Part II poisons, or any person substituted, by notice in writing to the local authority, for a person so nominated, but not more than two deputies may be nominated at the same time in respect of one set of premises(z).

The poisons in Part II of the Poisons List which are contained in the First Schedule to the Poisons Rules are as follows :—

Nicotine.

Arsenical poisons except substances containing less than the equivalent of 0.01 per cent. of arsenic trioxide.

Barium, salts of.

Mercuric chloride except substances containing less than 1 per cent. of mercuric chloride; mercuric iodide except substances containing less than 2 per cent. of mercuric iodide; organic compounds of mercury except substances containing less than the equivalent of 0.2 per cent., weight in weight, of mercury (Hg).

A listed seller of Part II poisons is not entitled to sell—

- (a) any poison included in the first column of the Fifth Schedule to these Rules unless the article or substance sold is one of the articles or substances specified against the description of the poison in the second column of that Schedule, and the container of the substance is, in addition to any other direction of the Act or of these Rules with respect to labelling, labelled clearly with a notice of the special purpose for which the article or substance is intended, and a warning that it is only to be used for that purpose;
- (b) any arsenical poison, other than lead arsenates, calcium arsenates and copper acetoarsenites, any mercuric chloride, mercuric iodide or any organic compound of mercury, unless the purchaser thereof is engaged in the trade or business of agriculture or horticulture and requires the poison for the purpose of that trade or business(a).

The substances listed in the Fifth Schedule together with the form to which the sale thereof is restricted, are as follows :—

<i>Poison.</i>	<i>Form to which sale is restricted.</i>
Arsenical substances—	
Arsenious oxide ..	Sheep-dips, sheep-washes.
Arsenic sulphides ..	Ditto.
Calcium arsenates ..	Agricultural and horticultural insecticides or fungicides.
Calcium arsenites ..	Ditto.
Copper acetoarsenite	Ditto.
Copper arsenates ..	Ditto.
Copper arsenites ..	Ditto.
Lead arsenates ..	Ditto.
Potassium arsenites	Sheep-dips, sheep-washes.
Sodium arsenates ..	Ditto.
Sodium arsenites ..	Ditto.
Sodium thioarsenates	Ditto.

(z) *Ibid*, Rule 14(1).

(a) *Ibid*, Rule 14(2).

<i>Poison.</i>	<i>Form to which sale is restricted.</i>
Barium carbonate ..	Preparations for the destruction of rats and mice.
Mercurial substances—	
Mercuric chloride ..	Agricultural and horticultural fungicides, seed and bulb dressings, insecticides.
Mercuric iodide ..	Agricultural and horticultural fungicides, seed and bulb dressings.
Organic compounds of mercury ..	Ditto.
Nitrobenzene ..	Agricultural and horticultural insecticides ; substances for the treatment of bee disease.

Labelling and containers.—The particulars with which the container of a poison is required to be labelled under the Act(b) or the Rules, must appear in a conspicuous position on the container in which the poison is sold and on every box or other covering of whatever nature enclosing the container, and the particulars must be clearly and distinctly set out and not in any way obscured or obliterated(c). The name of the poison must be the name under which the substance is included in the Poisons List(d).

The label of the container of any preparation containing a poison as one of its ingredients must include a statement of the proportion which the poison bears to the total ingredients of the preparation(e), but in the case of a preparation containing a poison specified in the first column of the Sixth Schedule to the Rules, it is sufficient to state on the label the particulars specified in the second column of that Schedule against the description of the poison(f). The poisons in Part II of the Poisons List referred to in the Sixth Schedule are as follows :—

<i>Name of Poison.</i>	<i>Particulars.</i>
Arsenical poisons ..	The proportion of arsenic trioxide (As_2O_3) or arsenic pentoxide (As_2O_5) that the preparation would be calculated to contain on the assumption that the arsenic (As) in the poison had been wholly converted into arsenic trioxide or arsenic pentoxide as the case may be.
Barium, salts of ..	The proportion of one particular barium salt which the preparation would be calculated to contain on the assumption that the barium (Ba) in the poison had been wholly converted into that salt.
Mercury, organic compounds of.	The proportion of organically combined mercury (Hg) contained in the preparation.
Phenols	The proportion of phenols (added together) contained in the preparation.

(b) Sect. 18(1)(c), Pharmacy and Poisons Act, 1933 ; 20 Halsbury's Statutes 575.

(c) Rule 16(1), Poisons Rules, 1935 ; S.R. and O., 1935, No. 1239.

(d) *Ibid*, Rule 17.

(e) *Ibid*, Rule 18(1).

(f) *Ibid*, Rule 18(2).

<i>Name of Poison.</i>	<i>Particulars</i>
Compounds of phenol with a metal.	The proportion of phenols (added together) that the preparation would be calculated to contain on the assumption that the compounds of phenols with a metal had been wholly converted into the corresponding phenols.
Potassium hydroxide..	The proportion of potassium monoxide (K_2O) which the preparation would be calculated to contain on the assumption that the potassium hydroxide in the preparation had been wholly converted into potassium monoxide.
Sodium hydroxide ..	The proportion of sodium monoxide (Na_2O) which the preparation would be calculated to contain on the assumption that the sodium hydroxide in the preparation had been wholly converted into sodium monoxide.

Where any proportion is stated as a percentage the statement must indicate whether the percentage is calculated on the basis of weight, weight in volume, or volume in volume(*g*). A reference to a substance or preparation containing 1 per cent. of any poison means—

- (a)—in the case of a solid, that one gramme of the poison is contained in every hundred grammes of the substance or preparation ;
- (b)—in the case of a liquid, that one millilitre of the poison, or, if the poison itself is a solid, one gramme of the poison, is contained in every hundred millilitres of the substance or preparation,

and so on in proportion for any greater or less percentage(*h*).

In the case of certain poisons, instead of bearing the word “poison”(*i*) they must be labelled with the words specified in the Seventh Schedule of the Rules as follows(*k*) :—

- 1—Preparations for the dyeing of hair containing phenylene diamines or toluene diamines or their salts—

To be labelled with the words—

“ Caution. This preparation may cause serious inflammation of the skin in certain persons and should be used only in accordance with expert advice.”

- 2—Potassium hydroxide, sodium hydroxide and articles containing either of those substances—

To be labelled with the words—

“ Caution. This substance is caustic.”

The word “poison” or the substituted words above must not be modified in meaning by the addition of any other words. In the case of arsenical and mercurial poisons, barium silico-

(*g*) *Ibid*, Rule 18(5).

(*h*) *Ibid*, Rule 2(3).

(*i*) As required by sect. 18(1)(c)(iii), Pharmacy and Poisons Act, 1933 ; 26 Halsbury's Statutes 575.

(*k*) Rule 19(1), Poisons Rules, 1935 ; S.R. and O., 1935, No. 1239.

fluoride and nicotine and its salts, the word "poison" must either be in red lettering or be set against a red background and in all cases must either be on a separate label or be surrounded by a line within which there must be no other words except words with which the container of the poison is required to be labelled under the Act or the Rules(*l*).

It is not lawful to sell any poison—

- (a) in the case of a liquid other than a medicine, contained in a bottle of a capacity of *not* more than 120 fluid ounces, unless the bottle is labelled with the words "*Not to be taken*"; and
- (b) in the case of an embrocation, liniment, lotion, liquid antiseptic, or other liquid medicine for external application, unless the container is labelled with the name of the article and the words "*For external use only*"(*m*).

The name of the seller of the poison and the address of the premises on which it was sold must be contained on the label(*n*), but it is not necessary to do so in the case of an article sold for the purpose of being sold again in the same container(*o*). Where a poison is supplied from a warehouse or depot this requirement is satisfied if the container of the poison is labelled with the address of the supplier's principal place of business or, in the case of a limited company, of the registered office of the company(*p*). Where a Part II poison is sold in a container and outer covering, being the container and covering in which it was obtained by the seller, it is sufficient if the name of the seller and the address of the premises appear only on the outer covering(*q*).

A warning must be included on the label in the case of arsenical and mercurial poisons, barium carbonate and nitrobenzene sold by a listed seller of Part II poisons, indicating the special purpose for which the article or substance is intended, and that it must only be used for that purpose(*r*).

The *container* in which a poison is sold, either wholesale or retail, must be impervious to the poison and sufficiently stout to prevent leakage arising from the ordinary risks of handling and transport, and in the case of a liquid in a glass bottle of a capacity *not* more than 120 fluid ounces, not being a medicine made up ready to be taken for the internal treatment of human ailments the outer surface of the bottle must be fluted vertically with ribs or grooves recognised by touch(*s*).

Poisons exempted from labelling provisions when sold or supplied in certain circumstances.—The following substances are exempt from the labelling provisions (except the name and

(*l*) *Ibid*, Rule 19(2).

(*m*) *Ibid*, Rule 20(1).

(*n*) Sect. 18(1)(c)(iv), Pharmacy and Poisons Act, 1933; 26 Halsbury's Statutes 575.

(*o*) Rule 21(1), Poisons Rules, 1935; S.R. and O., 1935, No. 1239.

(*p*) *Ibid*, Rule 21(2).

(*q*) *Ibid*, Rule 21(3).

(*r*) *Ibid*, Rule 14(2).

(*s*) *Ibid*, Rule 22.

address of the seller(*t*)) and the requirements of Rule 20 (see *ante*, p. 560) :—

ammonia,
formaldehyde,
hydrochloric acid,
hydrofluoric acid,
sodium silicofluoride,
mercuric chloride,
mercuric fluoride,

mercury (organic compounds),
nitric acid,
nitrobenzene,
phenols,
potassium hydroxide,
sodium hydroxide, and
sulphuric acid,

if sold to a person who—

- (a) carries on a business in the course of which poisons are regularly sold by way of wholesale dealing or are regularly used in the manufacture of other articles ; and
- (b) requires the poison for the purpose of that business ; if the outside of the package in which the poison is sold or supplied is labelled conspicuously with words indicating the dangerous properties of the poison(*u*).

Storage of poisons.—A poison included in the First Schedule of the Rules (see *ante*, p. 537) may not be stored in any retail shop or premises used in connection therewith unless the substance is stored—

-
- (a) in a cupboard or drawer reserved solely for the storage of poisons ; or
 - (b) in a part of the premises which is partitioned off or otherwise separated from the remainder of the premises and to which customers are not permitted to have access ; or
 - (c) on a shelf reserved solely for the storage of poisons and—
 - (i) no food is kept directly under the shelf, and
 - (ii) the container of the substance is rendered distinguishable by touch from the containers of articles and substances other than poisons stored upon the same premises :

Provided that, in the case of any such substance to be used in agriculture or horticulture, it shall not be lawful to store the substance on any shelf, or in any such part of the premises as aforesaid if food is kept in that part, or in any cupboard or drawer unless the cupboard or drawer is reserved solely for the storage of poisons to be used as aforesaid(*v*).

Transport of poisons.—All poisons must be transported in stoutly packed containers to avoid leakage(*w*). Arsenical poisons, the salts of barium and nicotine must be consigned in packages containing a label conspicuously marked with the name or description of the poison and a notice indicating that it is to be kept separate from food and from empty containers in which food has been contained(*x*).

(*t*) See sect. 18(1)(c)(iv), Pharmacy and Poisons Act, 1933 ; 26 Halsbury's Statutes 575.

(*u*) Rule 5(2) Poisons Rules, 1935, S.R. and O., 1935, No. 1239.

(*v*) *Ibid*, Rule 23. (*w*) *Ibid*, Rule 24. (*x*) *Ibid*, Rule 25 and Eighth Schedule.

Knowledge of purchaser, or certificate.—Where arsenical substances, mercurial substances, barium silicofluoride or nicotine are sold, the purchaser must either—

- (a) be known to the seller or to the person in charge of the premises on which the poison is sold, to be a person to whom the poison may properly be sold ; or
- (b) produce a certificate, signed by a householder, in the form prescribed in the Eleventh Schedule to the Rules, or if the householder is unknown to the seller, the certificate must be endorsed by a police officer(y).

The prescribed form of certificate is as follows :—

Certificate for the purchase of a poison. (Rule 31).

For the purposes of subsection (2)(a)(i) of section 18 of the Pharmacy and Poisons Act, 1933, I, the undersigned, a householder occupying (a).....hereby certify from my knowledge of (b).....of (a).....that he is a person to whom (c).....may properly be supplied.

I further certify that (d).....is the signature of the said (b).....

.....
Signature of householder giving
certificate.

Date.....

- (a) Insert full postal address.
- (b) Insert full name of intending purchaser.
- (c) Insert name of poison.
- (d) Intending purchaser to sign his name here.

Endorsement required by Rule 31 of the Poisons Rules to be made by a police officer in charge of a police station, when, but only when, the householder giving the certificate is not known to the seller of the poison to be a responsible person of good character.

I hereby certify that in so far as is known to the police of the district in which*.....resides he is a responsible person of good character.

Signature of Police Officer.....

Rank.....

In charge of Police Station at.....

Date.....

Office Stamp of
Police Station.

* Insert full name of householder giving the certificate.

Poisons book.—Particulars of sales of arsenical substances, mercurial substances, barium silicofluoride and nicotine must be entered in the Poisons Book, which must be in the form set out in the Twelfth Schedule to the Rules(z), *infra*.

(y) Sect. 18(1), Pharmacy and Poisons Act, 1933 ; 26 Halsbury's Statutes 574 ; and Rules 6, 7 and 31, Poisons Rules, 1935 ; S.R. and O., 1935, No. 1239.

(z) *Ibid*, Rule 32.

Form of entry required by Rule 32 to be made in the book to be kept by sellers of poisons in accordance with section 18 (2)(b) of the Act.

Date of Sale.	Name and quantity of poison supplied.	Purchaser's			Purpose for which stated to be required.	Date of certificate (if any).	Name and address of person giving certificate (if any).	Signature of purchaser or, where a signed order is permitted by the Poisons Rules, the date of the signed order.
		Name.	Address.	Business, trade or occupation.				

Orders in writing.—It is not necessary to require the entry in the Poisons Book to be signed by the purchaser, where the sale is for the purposes of his trade, business or profession, if the shopkeeper has obtained beforehand, before supplying the poison, an order in writing signed by the purchaser, stating his name and address, trade, business or profession, the name and quantity of the article to be purchased and the purpose for which it is required. In such circumstances the seller must be reasonably satisfied that the signature is that of the person purporting to have signed the order, and that the person carries on the trade, etc., stated in the order, being one in which the poison to be purchased is used. If the article is sent by post it must be sent by registered post. The seller must insert in the entry in the Poisons Book the words “signed order” and a reference number by which the order can be identified(a).

Emergency orders.—Where, for some reason, it is impossible for the purchaser to give a written order or to sign the Poisons Book and the poison is urgently required for the purposes of his trade or business, the seller may supply the poison if he receives an undertaking by the purchaser to furnish such an order within 24 hours next following. If the purchaser fails to carry out his undertaking he is deemed to have committed an offence against the provisions of the Rules and becomes liable to a penalty in accordance with section 24 of the Act of 1933 (see *ante*, p. 546)(a).

Colouring of certain poisons.—The sale of the following poisons intended for use in agriculture or horticulture for the destruction of bacteria, fungi, insects, vermin or as weed-killer is prohibited unless there has been added to the poison a dye of a distinctive colour and soluble in water, provided that this requirement does not apply to—

- (a) lead arsenate paste or lead arsenate powder ; or
- (b) poisons which are of themselves of a distinctive colour ; or
- (c) sheep-dips which are already of a distinctive colour ; or
- (d) articles to be exported to purchasers outside the United Kingdom.

Poisons to be coloured.

Arsenates ;
 Arsenites ;
 Copper acetoarsenites ;
 Halides of arsenic ;
 Organic compounds of arsenic ;
 Oxides of arsenic ;
 Sodium thioarsenates ; and
 Sulphides of arsenic(b).

(a) S.R. and O., 1935, No. 1239, Rule 7(3).

(b) Poisons (Colouring) Rules, 1936 ; S.R. and O., 1936, No. 363.

CHAPTER 23.

FERTILISERS AND FEEDING-STUFFS.

INTRODUCTION.

The law relating to fertilisers and feeding-stuffs is contained in the Fertilisers and Feeding Stuffs Act, 1926(*a*)—in this chapter referred to as “the Act of 1926”—and the Regulations(*b*) made thereunder. This Act was passed as a result of the work of a Departmental Committee set up in July 1923 to inquire into the operations of the Fertilisers and Feeding Stuffs Act, 1906. At the suggestion of the Departmental Committee the Fertilisers and Feeding Stuffs Advisory Committee was established, consisting of farmers, manufacturers and merchants, agricultural chemists and other scientific advisers, which examined the technical questions involved and reported in July, 1925(*c*).

The essential feature of the Act of 1926 is the separation of civil claims and criminal prosecutions. This is effected by arranging that—

- 1—samples taken on the farmers' premises shall be used only for the purpose of establishing civil claims (see *post*, p. 596); and
- 2—samples taken for official purposes, with a view to the institution of criminal proceedings, shall be taken on the premises of the sellers before delivery to the purchaser takes place (see *post*, p. 614).

The Minister responsible for the administration of the Act of 1926 is the Minister of Agriculture and Fisheries(*d*)—in this chapter referred to as “the Minister.”

The duties of the Minister may be summarised as follows :—

- 1—Make regulations for carrying the Act into operation, and, where necessary, for varying any of the Schedules, after consultation with the advisory committee set up by the Minister and the Department of Agriculture for Scotland—section 23(1)—see *post*, p. 622;
- 2—Approval of appointments of agricultural analysts, deputy agricultural analysts, inspectors and official samplers—section 11(3)—see *post*, p. 570;
- 3—Arrange for the appointment of an inspector, the taking and analyses of samples and, if necessary, the institution of proceedings in the case of a defaulting county or county borough council—sections 12(3) and 21(3)—see *post*, pp. 573 and 620;

(*a*) 1 Halsbury's Statutes 140.

(*b*) Fertilisers and Feeding Stuffs Regulations, 1932; S.R. and O., 1932, No. 658.

(*c*) Cmd. 2470.

(*d*) Sect. 26(1), Fertilisers and Feeding Stuffs Act, 1926; 1 Halsbury's Statutes, 154.

- 4—Give or withhold consent, in certain cases, to the institution of proceedings for offences—section 20(1)—see *post*, p. 620; and
- 5—Receive from county and county borough councils quarterly returns of results of analyses of samples submitted under the Act—section 18—see *post*, p. 567.

LOCAL AUTHORITIES FOR PURPOSES OF ACT OF 1926.

The Act of 1926 is enforced by county and county borough councils, in accordance with the provisions of section 11(1)(*e*).

Joint action by local authorities.—Two or more local authorities may combine for the purposes of the appointment of officers for the enforcement of the Act of 1926(*f*), but this power is in addition to the provisions of the Local Government Act, 1933(*g*), which enables local authorities to combine for all or any of the purposes of the Act of 1926 and for that purpose they may appoint a joint committee.

Defaulting local authority.—If, in the opinion of the Minister, a county or county borough council have not exercised their powers under the Act of 1926, either generally or in any particular case, the inspector of the Ministry may take samples and submit them to the agricultural analyst of the defaulting local authority, and any expenses incurred by the Minister may be recovered from the authority in default(*h*).

Reference to agricultural committee.—Every county council *must* and a county borough council *may* appoint an agricultural committee(*i*) and the powers of such councils under the Act of 1926 must be referred to such committee, but a county borough council may by resolution decide that such powers shall not be referred to their agricultural committee(*k*).

Delegation of powers to committees and sub-committees.—A county or county borough council may delegate their powers under the Act of 1926 to a committee and the committee to a sub-committee (see *ante*, p. 29).

Expenses of local authorities.—A county or county borough council may contribute towards the expenses incurred by any agricultural body or association in causing samples to be taken by an official sampler for analysis by the agricultural analyst.

(*e*) 1 Halsbury's Statutes 147.

(*f*) *Ibid*, sect. 11(5); 1 Halsbury's Statutes 147.

(*g*) 26 Halsbury's Statutes 295.

(*h*) Sect. 12(3), Fertilisers and Feeding Stuffs Act, 1926; 1 Halsbury's Statutes 148.

(*i*) Sect. 7(1), Ministry of Agriculture and Fisheries Act, 1919; 3 Halsbury's Statutes 453.

(*k*) *Ibid*, sect. 7(2); 1 Halsbury's Statutes 453.

The local authority may fix a fee to be payable in respect of the examination of samples by the agricultural analyst and the taking of samples at the request of purchasers, and different fees may be charged for different articles and different quantities of the same article(*l*).

Quarterly returns to Minister.—Every local authority under the Act of 1926 is required to send to the Minister a return each quarter showing the results of the analyses of the samples submitted to the agricultural analyst, and the agricultural analyst is required to furnish the local authority with such information as may be necessary for the purpose(*m*). The form of quarterly return has been prescribed by the Minister(*mm*) as on pages 568 and 569.

OFFICERS OF LOCAL AUTHORITIES.

It is the duty of every county and county borough council to appoint—

- 1—an agricultural analyst ;
- 2—an inspector ; and
- 3—an official sampler(*n*).

AGRICULTURAL ANALYST.

Appointment.—The qualifications of agricultural and deputy agricultural analysts have been prescribed by the Minister(*o*) ; and such persons must prove to the satisfaction of the Minister that they have competent knowledge of chemistry, and chemical analysis and microscopy as applied to fertilisers and feeding-stuffs. The Minister has intimated(*p*) that he will ordinarily accept as sufficient evidence of competence the diploma of the Royal Institute of Chemistry in the Branch of Agricultural Chemistry or the diploma of the Institute in the Branch of Food and Drugs together with, in this case, knowledge of the analytical work involved in the execution of the Act of 1926.

The county or county borough council may combine with other authorities in the appointment of an agricultural analyst(*q*).

(*l*) Sect. 17, Fertilisers and Feeding Stuffs Act, 1926 ; 1 Halsbury's Statutes 150.

(*m*) *Ibid*, sect. 18 ; 1 Halsbury's Statutes 150.

(*mm*) Art. 10 and Forms C and D, Schedule, Fertilisers and Feeding Stuffs Regulations, 1932 ; S.R. and O., 1932, No. 658.

(*n*) 1 Halsbury's Statutes 147.

(*o*) Art. 13, Fertilisers and Feeding Stuffs Regulations, 1932 ; S.R. and O., 1932, No. 659.

(*p*) Circular letter, 12th June, 1928, Ministry of Agriculture and Fisheries, para. 35.

(*q*) Sect. 11(5), Fertilisers and Feeding Stuffs Act, 1926 ; 1 Halsbury's Statutes 147.

Fertilisers and Feeding Stuffs Act, 1926.

Name of County, County Borough, Burgh or other District.....

Return to the Ministry of Agriculture and Fisheries (or the Department of Agriculture for Scotland) for the Quarter ended.....

FEEDING-STUFFS.

[illegible]

* Where an officer holds appointments as both inspector and official sampler, "I" should be inserted if the sample was taken in his capacity as inspector and "O.S." if the sample was taken in his capacity as official sampler.

* Insert in this column either (a) in the case of formal sample taken by inspector on premises of manufacturer or merchant—name and address of person on whose premises sample was taken; (b) in the case of formal sample taken by inspector on premises of farmer—the word "farmer"; (c) in the case of formal sample taken by official sampler (or inspector acting in capacity of official sampler)—name and address of seller; or (d) in the case of informal sample taken by inspector under Section 12 (2) or otherwise taken informally—the word "informal."

* In this column should be stated whether the sample contained any deleterious ingredient or any substance included in the Third Schedule and any other particulars as to the composition or condition of the sample. If estimated, percentages should be given.

Note.—If no samples have been analysed, a "nil" return should be rendered.

Signature

Date

Deputy agricultural analyst.—A deputy agricultural analyst may be appointed to act in the absence in the case of illness, incapacity or otherwise of the agricultural analyst. Where the deputy acts, the provisions of the Act apply as if he were the agricultural analyst(*r*).

Approval of appointment.—The appointments of an agricultural analyst and deputy analyst are subject to the approval of the Minister(*s*).

INSPECTOR.

Appointment.—An inspector must be a whole-time officer of the county or county borough council or in the case of a joint appointment of one or more of the councils concurring in the appointment. A local authority may appoint such number of inspectors as may be necessary(*t*). The Departmental Committee on the Fertilisers and Feeding Stuffs Act, 1906(*u*), expressed the following opinion on the appointment of inspectors :—

“ We are strongly of opinion that the officials under the proposed Act who are entrusted with the power of entry should be selected from the senior officers of the Local Authority. . . . In any case we do not think that any official should be appointed of less seniority than a Weights and Measures Inspector or a Sanitary Inspector.”

The county or county borough council may combine with other authorities in the appointment of inspectors(*v*).

Approval of appointment.—The appointment of an inspector is subject to the approval of the Minister(*w*).

Duties.—The duties of inspectors may be summarised as follows :—

- 1—To enter premises and take samples in accordance with the provisions of section 12 of the Act of 1926—see *post*, p. 572 ;
- 2—To enter premises for the purpose of inspecting the register of marks or statutory statements (sections 4(2) and 5(2)—see *post*, pp. 614 and 616), as empowered by section 9 of the Act of 1926—see *post*, p. 571 ; and
- 3—To institute proceedings, with the consent of the local authority, for offences against the Act—section 21(3)—see *post*, p. 620.

As to the powers of entry and sampling of inspectors, see *post*, p. 572.

Inspection of registers and statutory statements.—Every person who is required to keep a register under the Act of

(*r*) Sect. 11(2), Fertilisers and Feeding Stuffs Act, 1926 ; 1 Halsbury's Statutes 147.

(*s*) *Ibid*, sect. 11(3) ; 1 Halsbury's Statutes 147.

(*t*) *Ibid*, sect. 11(1) ; 1 Halsbury's Statutes 147.

(*u*) Cmd. 2125, p. 39.

(*v*) Sect. 11(5), Fertilisers and Feeding Stuffs Act, 1926 ; 1 Halsbury's Statutes 147.

(*w*) *Ibid*, sect. 11(3).

1926 (see *post*, p. 615) or to whom a statutory statement relating to an article which has been sold by him but which has never been on his premises has been sent, must preserve the register or statement for a period of four months(*x*), and on demand by an inspector at any time within that period he must produce the register or statement for inspection. A person who fails to comply with such a request of an inspector is liable to a penalty of £20. An inspector has a right of entry to premises at all reasonable times when he has cause to believe that any such register or statement is being kept, and he may take copies thereof(*y*).

Power to take samples outside district.—An inspector may exercise the power of entry and take samples outside the district for which he is appointed provided he obtains the consent of the authority in whose area he wishes to operate(*z*).

Obstruction of inspectors.—If the owner or person having the custody of any article refuses to allow an inspector to take a sample thereof or if any person otherwise wilfully delays or obstructs any inspector in the execution of his duties under the Act of 1926 he is liable, on summary conviction, to a fine not exceeding £20, but if required to do so an inspector must produce evidence of his authority(*a*).

Prohibition against disclosures.—If an inspector discloses any information obtained by him in, or in connection with, the exercise of his powers under the Act of 1926, except in so far as it is necessary to do so for the execution thereof, he is liable to a fine not exceeding £50(*b*).

OFFICIAL SAMPLERS.

Appointment.—An official sampler need not be a whole-time officer of the local authority but a person holding such an appointment must not engage in farming or any business connected with the manufacture, sale or importation of articles used as fertilisers of the soil or as food for cattle or poultry(*c*).

A local authority may appoint one and the same person to act as an inspector for the purposes of the Act of 1926, as well as official sampler, and such a procedure is frequently followed.

The county or county borough council may combine with other authorities in the appointment of an official sampler(*d*).

(*x*) Art. 8, Fertilisers and Feeding Staffs Regulations, 1932 ; S.R. and O., 1932, No. 658.

(*y*) Sect. 9, Fertilisers and Feeding Staffs Act, 1926 ; 1 Halsbury's Statutes 146.

(*z*) *Ibid*, sect. 12(1) ; 1 Halsbury's Statutes 147.

(*a*) *Ibid*, sect. 15 ; 1 Halsbury's Statutes 149.

(*b*) *Ibid*, sect. 16 ; 1 Halsbury's Statutes 150.

(*c*) *Ibid*, sect. 11(4) ; 1 Halsbury's Statutes 147.

(*d*) *Ibid*, sect. 11(5) ; 1 Halsbury's Statutes 147.

Approval of appointment.—The appointment of an official sampler is subject to the approval of the Minister(e).

Duties.—The duties of official samplers are comparatively simple compared with those of inspectors as they are not concerned with the administration of the part of the Act of 1926 dealing with criminal proceedings. They must take samples, in the prescribed manner, on request, of consignments delivered to purchasers, in accordance with the provisions of section 3(1) of the Act of 1926 (see *post*, p. 573). As to the method of taking samples, see *post*, p. 574. It should be noted, however, that an official sampler cannot take a sample after the expiration of 14 days from the delivery(f) of the articles to the purchaser, or the receipt by him of the statutory statement or warranty, whichever date may be the later(g).

SAMPLING OF FERTILISERS AND FEEDING-STUFFS.

Official samples.—The powers of entry and the right to sample fertilisers and feeding-stuffs are contained in section 12 of the Act of 1926, *infra*.

Section 12, Fertilisers and Feeding Stuffs Act, 1926—Powers of entry and sampling.

- (1) An inspector appointed by a council under this Act may at all reasonable times enter any premises in which he has reasonable cause to believe that there is any article included in the first column of the First Schedule to this Act which has been prepared for sale or consignment, or any article included in the first column of the First or Second Schedule to this Act which is stored for use and not for sale or manufacture, and may take samples in the prescribed manner of any article on such premises which he has reasonable cause to believe to be such an article as aforesaid :

Provided that an inspector shall not exercise such power as aforesaid in respect of any premises situate outside the county or county borough for which he acts without the consent of the council of the county or county borough in which the said premises are situate or of some officer of that council to whom powers of giving such consent may have been delegated by that council.

- (2) An inspector appointed by a council under this Act may for the purposes of this Act take a sample otherwise than in the prescribed manner of any article which has been sold for use as a fertiliser of the soil or as food for cattle or poultry, or which he has reasonable cause to believe to be intended for sale as such ; but the name of the seller or purchaser or owner of the article of which a sample is so taken shall not be communicated to any person.

(e) 1926 Act, sect. 11(3) ; 1 Halsbury's Statutes 147.

(f) An article consigned to a purchaser shall not for the purpose of the Act of 1926 be deemed to be delivered to him until it arrives at the place to which it is consigned whether the consignment is by direction of the seller or the purchaser—*ibid*, sect. 26(2) ; 1 Halsbury's Statutes 154.

(g) *Ibid*, sect. 3(2) ; 1 Halsbury's Statutes 142.

- (3) An inspector appointed by the Minister may, if specially authorised in that behalf, exercise in any county or county borough the powers conferred by this section on an inspector appointed by the council thereof.

If, in the opinion of the Minister, the council of a county or county borough have insufficiently exercised their powers under this Act, either generally or in any particular case, the inspector appointed by the Minister may submit to the agricultural analyst for the county or county borough the samples so taken by him within that county or county borough; and the amount of any expenses certified by the Minister to have been incurred by an inspector appointed by him in the exercise of such powers as aforesaid shall, on demand, be repaid to the Minister by the council in default, and shall be recoverable from the council either as a debt due to the Crown or summarily as a civil debt.

- (4) Where a sample of a parcel packed ready for retail sale which is of fourteen pounds weight or less and is exposed for sale by retail is taken under this section, the retailer may require the inspector to purchase the parcel on behalf of the local authority or of the Minister, as the case may be.
- (5) In the exercise at any railway station or upon any railway premises of the powers conferred upon him by this Act an inspector shall conform to such reasonable requirements of the railway company owning or using such station or premises as are necessary to prevent the working of the traffic thereat being obstructed or interfered with.

Right of purchaser to have article sampled and analysed.—

In accordance with section 3 of the Act of 1926, *infra*, the purchaser of an article included in the First and Second Schedules to the Act (see *post*, pp. 597 and 601) is entitled, on payment of the prescribed fee, to have a sample taken by an official sampler in the prescribed manner, analysed by the agricultural analyst and to receive from the latter a certificate of the result of the analysis.

Section 3, Fertilisers and Feeding Stuffs Act, 1926.—Right of purchaser to have article sampled and analysed.

- (1) The purchaser of any article included in the first column of the First or Second Schedule to this Act, or of any fertiliser or feeding-stuff not included therein in respect of which a warranty, express or implied, has been given by the seller, shall, on payment of such fee (if any) as may be fixed under this Act, be entitled to have a sample of the article taken by an official sampler in the prescribed manner and analysed by the agricultural analyst, and to receive from the analyst a certificate of the result of his analysis.

Provided that a purchaser of an article who requires a sample to be taken under this section shall, if so requested, furnish to the official sampler who takes the sample the statutory statement or warranty relating to the article, or a copy thereof.

- (2) A sample taken under this Act by an official sampler at the request of a purchaser shall be taken in the prescribed manner, and shall not be taken after the expiration of fourteen days from the delivery to the purchaser of the article sampled, or the receipt by the purchaser of the statutory statement or warranty, whichever date may be the later.

• **Fees for samples taken by request of purchaser.**—A county or county borough council are entitled to fix fees to be payable for the taking and analysing of samples at the request of the purchaser(*h*). The following graduated scale of charges has been suggested by the Ministry of Agriculture and Fisheries(*i*), and is intended to include all charges for sampling and analysis.

Amount of consignment.	Scale in first instance.	Range of increasing scales to be charged if and when it becomes necessary to raise fees.				
		s. d.	s. d.	s. d.	s. d.	s. d.
1 cwt. or less	Nil	Nil	Nil	0 3	0 6	0 6
Over 1 cwt. and not more than 1 ton	Nil	Nil	0 3	0 6	1 0	1 0
Over 1 ton and not more than 2 tons	Nil	0 3	0 6	1 0	2 0	2 0
Over 2 tons and not more than 4 tons	0 3	0 6	1 0	2 0	4 0	4 0
Over 4 tons and not more than 8 tons	0 6	1 0	2 0	4 0	8 0	8 0
Over 8 tons and not more than 20 tons	1 0	2 0	4 0	8 0	16 0	16 0
Over 20 tons and not more than 50 tons	2 0	4 0	8 0	16 0	30 0	30 0
Over 50 tons	4 0	8 0	16 0	30 0	30 0	30 0

Method of taking samples.—The Minister has prescribed the manner in which samples must be taken(*k*) as follows. It should be noted that these rules apply equally to inspectors and official samplers.

Article 3, Fertilisers and Feeding Stuffs Regulations, 1932.—Method of taking samples.

The manner in which the samples shall be taken and dealt with in cases where under the Act they are required to be taken in the prescribed manner shall be as follows:—

A—GENERAL.

- (i) Where the weight of the whole quantity does not exceed 2 cwt., or the whole quantity is in one container, the sample may consist of such a portion as is fairly representative of the whole, and the sample shall be of not less than 1½ lb. in weight.
- (ii) Except as provided by paragraph (i) above, in the case of articles in packages, only unopened packages shall be selected for the purpose of the sample.
- (iii) Samples shall not be drawn from part of any quantity which part bears the appearance of having received damage in transit or after delivery.

(*h*) 1926 Act, sect. 17(2); 1 Halsbury's Statutes 150.

(*i*) Circular letter, 12th June, 1928, Ministry of Agriculture and Fisheries, para. 10.

(*k*) Art. 3, Fertilisers and Feeding Stuffs Regulations, 1932; S.R. and O., 1932, No. 658.

- (iv) Notwithstanding anything in these Regulations, a sampling spear shall not be used in the case of a sample drawn by an inspector if objection is raised thereto, prior to the taking of the sample, on the grounds that the material is unsuitable.
- (v) In each case it shall be assumed that the quantity is composed of separate approximately equal parts and that the number of such parts is equivalent to (1) the number of packages to be selected in accordance with paragraph (vii)(a), or (2) the number of portions to be taken in accordance with paragraph (vii)(b) where the quantity is in bulk. The packages or portions selected shall be drawn from different positions in each part.
- (vi) In every case the sampling shall be done as quickly as is possible consistently with due care and the material shall not be exposed any longer than is absolutely necessary.

B—IN THE CASE OF A FERTILISER.

(vii) *If the fertiliser is in a state of fine division—*

- (a) *In Packages.*—When the fertiliser is in packages and the quantity exceeds 2 cwts., a number of packages shall be selected as follows, *viz.* :—

	If the sample is drawn by an inspector under Section 12(1) of the Act.		If the sample is drawn by an official sampler, after delivery of the article, under Section 3 of the Act.	
	Number taken for sampling	But not fewer packages than	Number taken for sampling	But not fewer packages than
	Per cent.		Per cent.	
Where the quantity exceeds one package and does not exceed 20 packages	20	2	10	2
Where the quantity exceeds 20 packages and does not exceed 60 packages	10	4	5	2
Where the quantity exceeds 60 packages and does not exceed 200 packages	7	6	4	3
Where the quantity exceeds 200 packages and does not exceed 500 packages	5	15	3	8
Where the quantity exceeds 500 packages and does not exceed 1,000 packages ..	4	25	2	13
Where the quantity exceeds 1,000 packages	3	40	1	20

When the number of packages to be selected according to either of the above percentage scales contains a fraction, this fraction shall be counted as a whole number.

The sample shall be drawn by one of the following methods :—

- (1) The selected packages shall be emptied separately on a clean dry surface and worked up with a spade and one spadeful taken from each. The spadefuls so taken shall then be thoroughly mixed together and any lumps broken up. From this mixture a sample from about 2 lb. to 4 lb. in weight shall be drawn.
- (2) As an alternative method, when the material is of a suitable nature, a portion shall be taken from each selected package by means of a suitable sampling spear. The separate portions thus taken from the selected packages shall be thoroughly mixed together and a sample from 2 lb. to 4 lb. in weight shall be drawn from the mixture.

In bulk.—Where the fertiliser is in bulk, a number of portions shall be taken by a spade or spear as follows :—

	<i>Portions.</i>
Where the quantity exceeds 2 cwt. and does not exceed 1 ton ..	4
Where the quantity exceeds 1 ton and does not exceed 2 tons ..	6
Where the quantity exceeds 2 tons and does not exceed 5 tons ..	10
Where the quantity exceeds 5 tons and does not exceed 10 tons ..	15
Where the quantity exceeds 10 tons and does not exceed 25 tons ..	25
Where the quantity exceeds 25 tons and does not exceed 50 tons ..	40
Where the quantity exceeds 50 tons and does not exceed 100 tons ..	60
Where the quantity exceeds 100 tons, for each additional 10 tons or part thereof	2

If the portions are taken by a spade, the spadefuls shall be treated and the sample drawn in the manner prescribed in paragraph (vii)(a)(1).

If the portions are taken by a spear, the portions shall be treated and the sample drawn in the manner prescribed in paragraph (vii)(a)(2).

(viii) *If the fertiliser is in a coarse or lumpy condition*, as in the case of caustic or burnt lime, not ground, the sample shall be drawn as follows :—

- (a) *In packages.*—The packages shall be selected according to the appropriate scale in paragraph

- (vii)(a) and treated as described in paragraph (vii)(a)(1). The spadefuls removed shall be crushed immediately and the whole passed through a sieve with meshes one and a quarter inch square. It shall be mixed thoroughly and rapidly and a sample of 4 lb. to 6 lb. in weight drawn from the mixture.
- (b) *In bulk.*—Spadefuls shall be taken according to the appropriate scale prescribed in paragraph (vii)(b). The spadefuls thus taken shall be treated, and a sample shall be drawn, in the manner prescribed in paragraph (viii)(a).
- (ix) *When the fertiliser consists of bulky material, uneven in character and likely to get matted together, such as shoddy, wool refuse, hair, etc.—*
- (a) *In packages.*—Packages shall be selected according to the appropriate scale given in paragraph (vii)(a) and the selected packages shall be emptied separately on a clean dry surface and the matted portions torn up.
- One spadeful shall be taken from each and the spadefuls shall be thoroughly mixed together. The sample shall be drawn from the mixture and shall be from 2 lb. to 4 lb. in weight. If the material separates into a fibrous part and a powdery part, the sample drawn shall consist of these two kinds in approximately their relative proportions as they exist in the fertiliser.
- (b) *In bulk.*—Spadefuls shall be taken according to the appropriate scale prescribed in paragraph (vii)(b). The spadefuls thus taken shall be treated, and a sample shall be drawn, in the manner prescribed in paragraph (ix)(a).
- (x) *Where the fertiliser consists of materials such as caustic lime or slaked lime (calcium hydroxide) which are liable to undergo change on exposure to air and moisture, or where the fertiliser consists of materials such as calcium nitrate, or ammonium nitrate, which are liable to absorb moisture, or where the material is sulphate of ammonia, the sampling shall be carried out in a dry place and the sample divided into parts and packed immediately.*
- (xi) *Where stones are naturally present in a fertiliser, they shall, if possible, be broken up and mixed with the quantity from which a sample is to be drawn. If they cannot be broken, the weight of the mixture from which a sample is to be drawn and the weight of the stones shall be ascertained and reported to the analyst.*

C—IN THE CASE OF A FEEDING-STUFF.

- (xii) *When the feeding-stuff is in the state of small lumps or meal, it shall be sampled in the manner prescribed in paragraphs (vii)(a) or (vii)(b).*
- (xiii) *When the feeding-stuff is in the state of cake, in bags or in bulk, a number of cakes shall be selected from the different parts of the whole quantity as follows :—*

Where the quantity exceeds 2 cwt. and does not exceed 2 tons	5
Where the quantity exceeds 2 tons and does not exceed 5 tons	10
Where the quantity exceeds 5 tons and does not exceed 50 tons	15
Where the quantity exceeds 50 tons and does not exceed 100 tons	25
Where the quantity exceeds 100 tons for each additional 20 tons or part thereof ..	2

The selected cakes shall be broken by a cakebreaker or in some other manner so that the whole shall pass through a sieve with meshes one and a quarter inch square. The broken pieces shall then be thoroughly mixed and from the mixture a sample of not less than 6 lb. in weight shall be drawn.

- (xiv) *When the feeding-stuff is in a fluid or semi-fluid condition* packages shall be taken in accordance with the appropriate scale shown in paragraph (vii)(a), the contents well mixed by stirring or shaking, and a similar portion taken from each. These portions shall then be mixed together, in a clean dry vessel, and from the mixture a sample of from 2 lb. to 4 lb. in weight shall be drawn.
- (xv) *Where any appreciable portion of the feeding-stuff appears to be mouldy*, or is otherwise apparently unsuitable for feeding purposes, separate samples shall be drawn of the unsuitable portion and of the residue of the feeding-stuff respectively, and in the case of unsuitable cakes, the sample may consist of several large pieces representative thereof.

D—DIVISION OF SAMPLE.

- (xvi) Where a sample has been taken with a view to the institution of any civil or criminal proceedings, the person taking the sample shall divide it into three parts, as nearly as possible equal, in the following manner:—
- (a) *In the case of dry or powdered substances.*—The sample, drawn as prescribed in the foregoing paragraphs, shall be thoroughly mixed on heavy glazed paper or oilcloth and divided into three similar and approximately equal portions. Each such portion shall be placed in a separate tin or bottle of a kind described in paragraph (xvii) and shall constitute a part of the sample.
- (b) *In the case of substances in a fluid or semi-fluid condition.*—The sample, drawn as prescribed in the foregoing paragraphs, shall be thoroughly mixed and at once divided into similar and approximately equal parts by pouring successive portions into each of three bottles.
- (xvii) Each of the parts into which the sample is divided shall be packed in a clean dry bottle with air-tight stopper or lid, or (except in the case of a fertiliser) a clean dry tin with close-fitting lid (such as a lever

lid), so that the original composition of the fertiliser or feeding-stuff may be preserved. In the case of caustic lime, slaked lime (calcium hydroxide), calcium nitrate, ammonium nitrate, ammonium sulphate and other substances likely to undergo change if not kept in an air-tight receptacle, the bottle used shall have a ground-in stopper, or be provided with a metal cap with inner pad. Each of the said parts shall be so secured and sealed that the bottle or tin containing it cannot be opened without breaking the seal; or, alternatively, the bottle or tin containing the part may be packed in a stout envelope or in a linen or cotton bag, and the envelope or bag then secured and sealed in such a manner that the part of the sample cannot be removed without breaking the seal or the envelope or the bag.

- (xviii) Each of the said parts shall be sealed and initialed by the person taking the sample. It may also be sealed or initialed by the person on whose premises the sample is taken, or his representative. Each part shall be marked with the name of the article, any mark applied to the article in compliance with the Act, the date and place of the sampling and with some distinguishing number, in such a manner that the particulars so marked can be seen without breaking the seal or seals.

Sampling spears may be obtained from the following firms:—

Messrs. Bryan Corcoran Ltd.,
31 Mark Lane,
London, E.C.3.

Messrs. Chas. Hearson & Co. Ltd.,
69 Willow Walk,
London, S.E.1.

Messrs. W. R. Dell & Sons,
57 Mark Lane,
London, E.C.3.

Formal and informal sampling.—It should be noted that an inspector may take a sample either in conformity with Article 3 of the Regulations of 1932, *supra* (*i.e.* a formal sample) or “otherwise” (*i.e.* informal sample) but a sampling officer is only entitled to take a sample in strict conformity with the provisions of Article 3, *supra*. Where an inspector exercises his right to take an informal sample, he must not disclose the name of the seller or purchaser or owner of the article to any other person.

Division and analysis of samples.—The procedure with respect to the division of samples into parts and the analysis to be carried out by the agricultural analyst is contained in section 13 of the Act of 1926, *infra*.

Section 13, Fertilisers and Feeding Stuffs Act, 1926.—Provisions as to analysis of samples.

- (1) Where a sample has been taken by an inspector or official sampler in the prescribed manner he shall divide it into three

parts and cause each part to be marked, sealed and fastened up and he shall send two of the parts to the agricultural analyst together with a signed statement that the sample was taken in the prescribed manner, and the third part he shall deliver or send to the owner or seller as may be prescribed.

- (2) Where a sample submitted to the agricultural analyst has been so divided into parts the agricultural analyst shall analyse one of the parts of the sample sent to him and shall retain the other for such period as may be prescribed.
- (3) If the person by or on whose behalf the sample of an article is taken and analysed, or the owner or seller of the article objects to the certificate of the agricultural analyst, the person objecting thereto shall on payment of such fee as may be fixed by the Treasury be entitled to have submitted to the Government Chemist the part of the sample retained by the agricultural analyst and to have that part analysed by him and to receive from him a certificate of the result of his analysis.
- (4) Where a sample or part of a sample is under this section sent for analysis to the agricultural analyst or the Government Chemist, there shall also be sent to him any statutory statement or warranty relating to the article sampled or a copy thereof, or a copy of the particulars marked on or indicated by a mark applied to the article.
- (5) A certificate of analysis shall be signed by the agricultural analyst or the Government Chemist as the case may be ; but the analysis may be made by any person acting under the direction of the agricultural analyst or the Government Chemist.
- (6) Where a sample taken in the prescribed manner has been analysed by the agricultural analyst, he shall furnish to the person who submitted the sample for analysis and, where that person is not the purchaser, also to the purchaser and in every case to the owner or seller of the article his certificate of analysis :

Provided that, if the agricultural analyst does not know the name and address of the owner or seller, he shall send his certificate intended for the owner or seller to the person who submitted the sample, who shall forward it to the owner or seller.

- (7) Where the sample has not been taken in the prescribed manner, the agricultural analyst shall send the certificate to the person who submitted the sample to him.

It is important to remember that when an inspector or official sampler forwards the two portions of a formal sample to the agricultural analyst for analysis he *must* send a certificate to the effect that the sample has been taken in the prescribed manner. It should also be noted that *two* portions of the sample must be sent to the agricultural analyst(*kk*). In the case of a sample taken by an official sampler the third part of the sample must be delivered or sent by registered post to the last seller or his agent ; in the case of a sample taken by an inspector, the third portion must be delivered or sent by registered post to the person who would be liable to prosecution

(*kk*) Compare the procedure under the Food and Drugs Act, 1938 ; *ante*, p. 60.

in the event of an offence being disclosed by the results of the analysis of the sample, or to the representative of such person^(l).

The agricultural analyst is required to retain one of the two portions of the sample for a period of six months from the date of the certificate relating to the sample^(m).

The fee fixed by the Treasury for the examination of a sample by the Government Chemist is £2 2s.

Methods of analysis.—The methods of analysis to be adopted for the analysis of fertilisers and feeding-stuffs have been prescribed by the Minister⁽ⁿ⁾ as follows :—

**Article 11, Fertilisers and Feeding Stuffs Regulations, 1932—
Methods of Analysis of Fertilisers.**

The methods of analysis of a fertiliser for the purposes of the Act shall be as follows :—

(i) **Preparation of the sample for analysis.**

- (a) In the case of powdered fertilisers in a dry, or moderately dry, condition, the sample shall be passed through a sieve having apertures about one millimetre square.

Adventitious materials which cannot be conveniently crushed, *e.g.* fragments of metal in basic slag, shall be removed and allowed for.

- (b) Other substances which are dry enough to powder, but which are not in a fine condition, shall be pulverised until the sample passes through a sieve having apertures about one millimetre square.

- (c) Wool, hair, hoof, shoddy and similar substances shall be pulled apart and cut until in a fine condition ; or, if dry, they may be passed through a shredding machine.

- (d) Moist fertilisers which do not admit of being passed through a sieve shall be thoroughly mixed by the most suitable means.

- (e) In the case of substances which gain or lose water during the process of pulverising or mixing, the proportion of water shall be determined in the coarse and in the powdered condition respectively, and the results of the analysis of the powdered sample shall be calculated to the water content of the original coarse substance.

- (f) Crystalline or saline materials, such as sulphate of ammonia, nitrate of soda or potash salts may be prepared by being well mixed and rapidly ground in a stoneware mortar, the portion finally reserved for analysis being specially finely ground.

- (g) When the sample has been passed through the sieve and thoroughly mixed, or, if not passed through the sieve, has been thoroughly mixed, a part of it not being less than 100 grams shall be placed in a stoppered bottle and from this the portions for analysis shall be weighed.

(ii) **Determination of moisture (loss on drying).**

A weighed quantity of the sample shall be dried at 100° C.

(l) Art. 7, Fertilisers and Feeding Stuffs Regulations, 1932 ; S.R. and O., 1932, No. 658.

(m) *Ibid*, Art. 9.

(n) *Ibid*, Articles 11 and 12.

(iii) **Determination of nitrogen.**

The presence or absence of nitrates shall first be ascertained—

(a) *Nitrogen (organic and ammoniacal) in absence of nitrates.*

- (A) A weighed portion of the sample shall be transferred to a Kjeldahl digestion flask, 25 millimetres of concentrated sulphuric acid (or more if necessary) shall be added and the flask gently heated until frothing ceases. Ten grams of potassium or sodium sulphate (anhydrous) shall then be added and the flask further heated until the colour of the clear liquid ceases to diminish. The digestion shall be continued for an hour thereafter to ensure complete oxidation of the organic matter. The operation may be accelerated by the addition of a small crystal of copper sulphate or a globule of mercury to the liquid in the digestion flask.
- (B) The quantity of ammonia present in the liquid shall be determined by distillation into standard acid after liberation with alkali and, where mercury has been used, with the addition also of sodium or potassium sulphide solution.

(b) *Nitrogen (total, i.e., organic, ammoniacal and nitric) when nitrates are present.*

- (A) A weighed portion of the sample shall be transferred to a Kjeldahl digestion flask; 30 millilitres of concentrated sulphuric acid, containing 1 gram of salicylic acid or 1 gram of phenol shall be added and the flask shall be shaken so as to mix its contents without delay. The shaking shall be continued at intervals during 10 minutes, the flask being kept cool, and then 10 grams of potassium or sodium sulphate (anhydrous) shall be added, together with either 5 grams of crystalline sodium thiosulphate or 2 grams of zinc dust. The flask shall be heated until the colour of the clear liquid ceases to diminish and for an hour thereafter. A further quantity of concentrated sulphuric acid may be added if necessary. Copper sulphate or mercury may be used as described in paragraph (iii)(a)(A).
- (B) The quantity of ammonia shall be determined as prescribed in paragraph (iii)(a)(B).

(c) *Nitrogen in form of ammonium salts.*

(Note.—In the case of compound fertilisers containing calcium carbonate with small quantities of ammonium salts, the portion taken for analysis must be dissolved in hydrochloric acid and the solution used for distillation with alkali.)

- (1) *In absence of organic matter.*—A weighed portion of the sample shall be dissolved in water and made up to a definite bulk. An aliquot part of the solution shall be transferred to a distillation flask and the quantity of ammonia shall be determined as above prescribed in paragraph (iii)(a)(B).
- (2) *In presence of organic matter.*—A weighed portion of the sample shall be transferred to a distillation flask with about 200 millilitres of water and 5 grams of magnesium oxide, free from carbonates, and the quantity of ammonia determined by distillation into standard acid.

(d) *Nitrogen as nitrates.*(1) *In absence of organic matter.*

- (A) A weighed portion of the sample shall be dissolved in water and made up to a definite bulk. An aliquot part of the solution shall be transferred to a flask and a quantity of finely powdered Devarda metal added. The quantity of Devarda metal shall be not less than six times the weight of the sample present in the aliquot part taken. An excess of concentrated alkali shall then be added and the flask at once connected with a distillation apparatus. After standing for 30 minutes to allow the reaction to proceed, heating gently if necessary, the ammonia shall be distilled over into standard acid.
- (B) Alternative method.—10 grams of the sample shall be dissolved in water and the solution made up to 500 millilitres, 50 millilitres of the solution shall be placed in a half-litre Erlenmeyer flask and 10 grams of reduced iron and 20 millilitres of sulphuric acid of 1.35 specific gravity shall be added. The flask shall be closed with a rubber stopper provided with a thistle tube, the head of which shall be half-filled with glass beads and allowed to stand until effervescence ceases. The liquid shall then be boiled for 5 minutes, the flask removed from the flame and any liquid that may have accumulated among the beads rinsed back with water into the flask. The solution shall be boiled for 3 minutes more and the beads again washed with a little water. The quantity of ammonia shall then be determined as described in paragraph (iii)(a)(B).

(2) *In the presence of organic matter.*

One gram of the sample shall be placed in a half-litre Erlenmeyer flask with 50 millilitres of water. Ten grams of reduced iron and 20 millilitres of sulphuric acid of 1.35 specific gravity shall be added and the procedure prescribed in paragraph (iii)(d)(1)(B) above shall be followed, except that the quantity of ammonia contained in the liquid, after the treatment with reduced iron, shall be determined by distillation after addition of magnesium oxide as in paragraph (iii)(c)(2). In cases in which the proportion of nitrates is small, a larger quantity of the sample shall be taken.

- (e) *Control experiment in determination of nitrogen.*—The materials used in any of the methods described in paragraph (iii) shall be examined as to their freedom from nitrogen by means of a control experiment carried out under similar conditions with the same quantities of the reagents which have been employed in the actual analysis in the case of (a) 1 gram of pure sugar being used in place of the weighed portion of the sample. The quantity of standard acid found to have been neutralised in the control experiments shall be deducted from the total quantity of acid neutralised in the distillation of the sample.

(iv) **Determination of phosphoric acid.**

(a) *Soluble phosphoric acid.*—Twenty grams of the sample shall be continuously agitated for 30 minutes in a litre flask with 800 millilitres of water at room temperature. The flask shall then be filled to the mark and shaken and the contents shall be filtered.

(A) Fifty millilitres of the filtrate shall be boiled with 20 millilitres of concentrated nitric acid and the phosphoric acid shall be determined by the molybdate method prescribed in paragraph (iv)(e). In the case of fertilisers in which the proportion of phosphoric acid soluble in water is small, a larger quantity of the filtrate prepared as above shall be taken.

(B) *Alternative method.*—Fifty millilitres of the filtrate shall be boiled with 20 millilitres of concentrated nitric acid, cooled and the excess of acid neutralised with ammonia. Fifty millilitres of ammonium citrate solution, prepared as described below, shall be added and the mixture raised to boiling-point. Magnesia mixture shall then be added in the manner prescribed in paragraph (iv)(e).

(b) *Insoluble phosphoric acid.*—The quantity of soluble phosphoric acid as determined in paragraph (iv)(a) shall be deducted from the quantity of phosphoric acid as determined in paragraph (iv)(c) and the difference, if any, shall be taken as the quantity of insoluble phosphoric acid.

(c) *Total phosphoric acid.*

(A) A weighed portion of the sample shall be heated with concentrated sulphuric acid until all organic matter is destroyed and the phosphoric acid is completely in solution. After dilution the solution shall be filtered, the insoluble matter thoroughly washed and the filtrate made up to a definite bulk. The phosphoric acid shall be determined by the method prescribed in paragraph (iv)(e), in an aliquot part of the solution, which shall first be nearly neutralised and then acidified with nitric acid. The insoluble matter is to be washed from the filter, re-extracted with acid and any phosphoric acid present in the solution added to the main quantity.

(B) *Alternative method.*—A weighed portion of the sample shall be incinerated or otherwise treated to destroy organic matter, if present. When direct incineration is employed, the weighed portion of the sample shall be treated, before being heated, with a nitrate or other oxidising material to prevent loss of phosphoric acid during heating or subsequent treatment. The residue (or the weighed portion taken, if no organic matter is present) shall be dissolved in hydrochloric acid, with the addition, if necessary, of nitric acid, and the solution shall be evaporated to dryness or, if much calcium is present, to a syrupy consistency to fix silica. The residue shall be boiled with nitric acid and, when much iron is present, with hydrochloric acid also. After dilution the solution shall be filtered, the insoluble matter thoroughly washed and the filtrate made up to a

definite bulk. The phosphoric acid shall be determined in an aliquot part of the solution by the method prescribed in paragraph (iv)(e). The insoluble matter is to be washed from the filter, re-extracted with acid and any phosphoric acid present in the solution added to the main quantity.

- (d) *Citric soluble phosphoric acid (that is, phosphoric acid soluble in the prescribed citric acid solution).*—Five grams of the sample shall be transferred to a stoppered bottle of about 1 litre capacity. Ten grams of pure crystallised citric acid shall be dissolved in water, the volume shall be made to 500 millilitres and the solution shall be added to the weighed portion of the sample in the bottle. To lessen the possibility of caking, the portion of the sample in the bottle may be moistened with 5 millilitres of alcohol or methylated spirit before the citric acid solution is added; and in that case the volume of the citric acid solution shall be 495 millilitres instead of 500 millilitres. The bottle shall be at once fitted into a mechanical shaking apparatus and shall be continuously agitated during 30 minutes. The solution shall then be filtered through a large "folded" filter, the whole of the liquid being poured on the paper at once. If not clear, the filtrate shall be again poured through the same paper.

Fifty millilitres of the filtrate shall be taken and the phosphoric acid shall be determined forthwith by the molybdate method prescribed in paragraph (iv)(e).

- (e) *Molybdate method.*—To the solution, which should contain not more than 0.4 gram of phosphoric acid (P_2O_5) and preferably from 0.1 to 0.3 gram, obtained as above described in paragraphs (iv)(a), (a) or (c) or (d), 100 to 150 millilitres of molybdic acid solution prepared as described below, or an excess of such solution, *i.e.* more than is sufficient to precipitate all the phosphoric acid present in the solution, shall be added and the vessel containing the solution shall be placed in a water-bath maintained at 70° C. for 15 minutes or until the solution has reached 70° C. It shall then be taken out of the bath and allowed to cool and the solution shall be filtered, the phospho-molybdate precipitate being washed several times by decantation and finally on the paper with 1 per cent. of nitric acid solution. The filtrate and washings shall be mixed with more molybdic acid solution and allowed to stand for some hours in a warm place in order to ascertain that the whole of the phosphoric acid has been precipitated. The phospho-molybdate precipitate shall be dissolved in cold 2 per cent. ammonia solution, prepared as described below, and about 100 millilitres of the ammonia solution shall be used for the solution and washings. The solution shall be raised to the boiling point, the beaker removed from the burner and 15 to 20 millilitres of magnesia mixture prepared as described below, or an excess of such mixture, *i.e.*, more than sufficient to precipitate all the phosphoric acid present, shall then be added drop by drop with constant stirring. The stirring shall be continued at intervals so long as

the liquid remains very warm. After standing at least 4 hours with occasional stirring, the precipitate shall be filtered off, washed with 2 per cent. ammonia solution until free from chloride, dried and finally weighed as magnesium pyrophosphate. The filtrate and washings should not exceed 200 millilitres, and are to be tested by the addition of more magnesia mixture.

- (f) *Preparation of molybdic acid solution.*—The molybdic acid solution shall be prepared as follows:—

125 grams of molybdic acid and 100 millilitres of water shall be placed in a litre flask and the molybdic acid shall be dissolved by the addition, while the flask is shaken, of 300 millilitres of 8 per cent. of ammonia solution, prepared as described below; 400 grams of ammonium nitrate shall be added, the solution shall be made up to the mark with water and the whole added to 1 litre of nitric acid (specific gravity 1.19). The solution shall be maintained at about 35° C. for 24 hours and then filtered.

- (g) *Preparation of magnesia mixture.*—The magnesium mixture shall be prepared as follows:—

110 grams of crystallised magnesium chloride and 140 grams of ammonium chloride shall be dissolved in 1,300 millilitres of water. This solution shall be mixed with 700 millilitres of 8 per cent. ammonia solution and the whole shall be allowed to stand for not less than 3 days and shall then be filtered.

- (h) *Preparation of the ammonia solutions.*—The 8 per cent. ammonia solution shall be prepared as follows:—

One volume of ammonia solution of specific gravity 0.880 shall be mixed with three volumes of water. This solution shall then be adjusted by the addition thereto of more strong ammonia solution or water as required until the specific gravity of the solution is 0.967.

The 2 per cent. ammonia solution shall be prepared as follows:—

One volume of 8 per cent. ammonia solution shall be mixed with three volumes of water.

- (i) *Preparation of ammonium citrate solution.*—110 grams of pure citric acid shall be dissolved in water, the solution treated with 400 millilitres of 24 per cent. ammonia of specific gravity 0.9135 and then diluted to 1 litre.

(v) **Determination of potash.**

Potash shall be determined by the perchloric acid method or, alternatively, by the platinum chloride method.

(1) *Perchloric acid method.*

- (a) *Salts of potash free from sulphates.*—A weighed portion of the sample equivalent in potash content to 1.5 to 2.0 grams of potash (K_2O) shall be dissolved in water. The solution shall be filtered if necessary and made up to 500 millilitres. The potash shall be determined in 50 millilitres of the solution by precipitation with perchloric acid as prescribed in paragraph (v)(1)(d).

(b) *Salts of potash containing sulphates.*

- (A) A weighed portion of the sample equivalent in potash content to 1.5 to 2.0 grams of potash (K_2O) shall be boiled with 300 millilitres of water to which 20 millilitres of hydrochloric acid have been added. Barium chloride solution shall be cautiously added, drop by drop, to the boiling solution until the sulphuric acid is completely precipitated. The liquid shall be cooled, made up to 500 millilitres and filtered. Fifty millilitres of the filtrate shall be taken and evaporated to dryness and shall then be moistened with concentrated hydrochloric acid, again evaporated to dryness, treated with a little dilute hydrochloric acid and filtered if necessary. The potash shall be determined by precipitation with perchloric acid as prescribed in paragraph (v)(1)(d).

If the solution contains phosphates, iron, manganese or other substances that would interfere with the determination of potash, the method prescribed in paragraph (v)(1)(c) is to be used instead of the method prescribed in paragraph (v)(1)(b).

- (B) Alternative method.—A weighed portion of the sample equivalent in potash content to 1.5 to 2.0 grams of potash (K_2O) shall be boiled with 300 millilitres of water, cooled, made up to 500 millilitres and filtered. To 50 millilitres of the filtrate, 30 millilitres of a solution of sodium cobaltinitrite shall be added, the mixture stirred and allowed to stand for not less than 2 hours. It shall then be filtered and washed with water containing a small amount of the cobaltinitrite solution. The precipitate shall be dissolved in hot dilute hydrochloric acid and the solution filtered into a small porcelain dish and evaporated to dryness. The residue shall be dissolved in water and the potash determined by precipitation with perchloric acid as prescribed in paragraph (v)(1)(d).

(c) *Potash in guanos and mixed fertilisers.*

- (A) Ten grams of the sample shall be gently incinerated in order to char organic matter, if present, and shall then be heated for 10 minutes with 10 millilitres of concentrated hydrochloric acid and finally boiled with 300 millilitres of water. The liquid shall be filtered, raised to the boiling-point and powdered barium hydroxide shall be added until slightly alkaline. It shall then be cooled, made up to 500 millilitres and filtered. Of the filtrate, 250 millilitres shall be treated with ammonia solution and excess of ammonium carbonate and then, while boiling, with a little powdered ammonium oxalate, cooled, made up to 500 millilitres and filtered. Of the filtrate, 100 millilitres are to be evaporated in a porcelain dish to dryness. If desired, nitric acid may be added during the evaporation after free ammonia has been driven off. The residue is to be heated gently over a low flame until the ammonium salts are expelled, the

temperature being carefully kept below that of low redness. The residue shall be moistened with concentrated hydrochloric acid, evaporated to dryness, treated with dilute hydrochloric acid and filtered. The potash shall be determined in the filtrate by precipitation with perchloric acid as prescribed in paragraph (v)(1)(d).

- (B) *Alternative method.*—Ten grams of the sample shall be gently incinerated in order to char organic matter, if present, and shall then be heated for 10 minutes with 10 millilitres of concentrated hydrochloric acid and finally boiled with 300 millilitres of water. The liquid shall be filtered into a half-litre flask and the residue washed. The solution shall be made up to 500 millilitres and 50 millilitres taken, boiled with solution of sodium nitrite to expel ammonium salts, if present, and evaporated to dryness. The residue shall be dissolved in water containing a little hydrochloric acid and sufficient sodium citrate added to prevent precipitation of phosphates. It shall then be mixed with 30 millilitres of cobaltinitrite solution, in the manner prescribed in paragraph (v)(1)(b)(B) and the precipitate treated as therein directed.
- (d) *Precipitation of potash as potassium perchlorate.*—To the solution obtained as above described in paragraphs (v)(1)(a), (b) or (c) and placed in a small glass or porcelain basin, about 7 millilitres of a 20 per cent. solution of perchloric acid (specific gravity 1.125), free from chloric acid, shall be added. The basin shall be placed on a hot-plate or sand-bath and the contents evaporated until white fumes are copiously evolved.
- The precipitate shall be re-dissolved in hot water, a few drops of perchloric acid solution added and the whole concentrated again to the fuming stage. After cooling, the residue in the basin shall be thoroughly stirred with 20 millilitres of alcohol of specific gravity 0.816 to 0.812 (95 to 96 per cent. of alcohol by volume). The precipitate shall be allowed to settle and the clear liquid shall be poured through a weighed or counterpoised filter paper, or through a gooch crucible, draining the precipitate as completely as possible from the liquid before adding the washing solution. The precipitate shall be washed by decantation with alcohol (as above) saturated with potassium perchlorate at the temperature at which it is used, pouring the washing through the paper or gooch crucible on which the whole of the precipitate is finally collected, dried at 100° and weighed. The precipitate is to be regarded as KClO_4 and is to be calculated to its equivalent as K_2O .
- (e) *Preparation of the cobaltinitrite solution.*—The cobaltinitrite solution shall be prepared as follows:—50 grams of cobalt nitrate and 300 grams of sodium nitrite shall be dissolved in water, acidified with 25 millilitres of glacial acetic acid and diluted to a litre. The solution shall be filtered after standing 24 hours and is then ready for use. It must be kept in the dark.

(2) *Platinum chloride method.*

- (a) *Salts of potash free from sulphates.*—A weighed portion of the sample equivalent in potash content to 1.5 to 2.0 grams of potash (K_2O) shall be dissolved in water; the solution shall be filtered if necessary and made up to 500 millilitres. The potash shall be determined in 50 millilitres of the solution by the platinum chloride method prescribed in paragraph (v)(2)(d).
- (b) *Salts of potash containing sulphates.*—A weighed portion of the sample equivalent in potash content to 1.5 to 2.0 grams of potash (K_2O) shall be boiled with 300 millilitres of water to which 20 millilitres of hydrochloric acid have been added. Barium chloride solution shall be cautiously added, drop by drop, to the boiling solution until the sulphuric acid is completely precipitated. Any slight excess of barium shall be removed by the addition of the least possible excess of dilute sulphuric acid. The liquid shall be cooled, made up to 500 millilitres and filtered. Fifty millilitres of the filtrate shall be taken and evaporated to dryness and shall then be moistened with concentrated hydrochloric acid, again evaporated to dryness, treated with a little dilute hydrochloric acid and filtered if necessary. The potash shall be determined in the filtrate by the platinum chloride method, prescribed in paragraph (v)(2)(d).

If the solution contains phosphates, iron, manganese, magnesium or other substances that would interfere with the determination of potash, the method prescribed in paragraph (v)(2)(c) is to be used instead of the method prescribed in paragraph (v)(2)(b).

- (c) *Potash in guanos and mixed fertilisers.*—Ten grams of the sample shall be gently incinerated in order to char organic matter, if present, and shall then be heated for 10 minutes with 10 millilitres of concentrated hydrochloric acid and finally boiled with 300 millilitres of water. The liquid shall be filtered, raised to the boiling-point and powdered barium hydroxide shall be added until slightly alkaline. It shall then be cooled, made up to 500 millilitres and filtered. Of the filtrate, 250 millilitres shall be treated with ammonia solution and excess of ammonium carbonate and then, while boiling, with a little powdered ammonium oxalate, cooled, made up to 500 millilitres and filtered. Of the filtrate, 100 millilitres are to be evaporated in a porcelain dish to dryness. If desired, nitric acid may be added during the evaporation after free ammonia has been driven off. The residue is to be heated gently over a low flame till all ammonium salts are expelled, the temperature being carefully kept below that of low redness. The residue shall be moistened with concentrated hydrochloric acid, evaporated to dryness, treated with dilute hydrochloric acid and filtered. The potash shall be determined in the filtrate by the platinum chloride method prescribed in paragraph (v)(2)(d).

- (d) *Precipitation of potash as potassium chloroplatinate.*—To the solution obtained as above described in paragraphs (v)(2)(a),(b) or (c), a few drops of hydrochloric acid shall be added, if none is present, and also 10 millilitres or an excess of solution of platinum chloride containing 10 grams of platinum per 100 millilitres. After evaporation to a syrupy consistency on a water-bath, the contents of the basin shall be allowed to cool and shall then be treated with alcohol of specific gravity 0.864, being washed by decantation until the alcohol is colourless. The washings shall be passed through a weighed or counterpoised filter-paper, on which the precipitate shall be finally collected, washed with alcohol as above, dried at 100° C. and weighed. The precipitate is to be regarded as K_2PtCl_6 and is to be calculated to its equivalent as K_2O .

(vi) **Determination of free acid in sulphate of ammonia.**

Twenty grams of the sample shall be dissolved in about 50 millilitres of neutral distilled water and the solution filtered. The filtrate shall be made up to about 250 millilitres and then titrated with decinormal sodium hydroxide solution, using two or three drops of methyl-orange solution as indicator. The methyl-orange solution shall contain 0.5 gram of methyl orange in a litre of water. The result shall be expressed as percentage by weight of sulphuric acid (H_2SO_4).

(vii) **Determination of lime in burnt lime and in calcium hydroxide (hydrated lime).**

A portion of the sample shall be rapidly ground and passed through a sieve having apertures about 0.2 millimetre square and from this specially prepared portion the quantities for determination of lime shall be weighed.

A quantity of the sample about 5 grams in weight, accurately weighed, shall be transferred to a stoppered bottle of about 1 litre capacity and moistened with 10 millilitres of alcohol neutral to phenol phthalein, to lessen the possibility of caking; 490 millilitres of a 10 per cent. solution of cane sugar (made neutral to phenol phthalein) shall be added and the bottle at once fitted into a shaking apparatus and agitated for a period of not less than 4 hours. The solution shall then be filtered through a dry paper into a dry vessel and 50 millilitres of the filtrate shall be titrated with a seminormal hydrochloric acid (HCl) using phenol phthalein as indicator.

The method gives the total amount of lime present in the sample in the form of caustic lime (CaO) and of calcium hydroxide ($Ca(OH)_2$) and the result may be calculated to CaO , or $Ca(OH)_2$, as desired.

(viii) **Determination of calcium carbonate, in ground chalk, ground limestone and dried carbonate of lime.**

(a) A weighed quantity of the finely ground sample shall be treated with dilute hydrochloric acid until effervescence ceases, the solution filtered and the insoluble matter washed. The calcium shall be precipitated from the filtrate as oxalate and weighed as oxide. Steps shall be taken to exclude from the oxalate precipitate iron, alumina and other interfering substances.

- (b) The amount of carbon dioxide evolved on treatment of a weighed quantity of the finely ground sample with dilute acid shall be determined in a suitable apparatus.
- (c) The amount of calcium oxide determined under (a) shall be calculated to calcium carbonate, provided that the necessary equivalent of carbon dioxide is present in the sample. If less than the equivalent of carbon dioxide is present in the sample, the quantity of carbon dioxide determined under (b) shall be calculated to calcium carbonate.

(ix) **The prescribed sieve.**

- (a) The sieve to be used for the purpose of the statement as to fineness of grinding of basic slag, ground limestone and raw phosphate or phosphate rock shall be the British Standard Test Sieve, mesh number 100—British Standard Specification for Test Sieves, No. 410/1931.
- (b) The sieving of a sample shall be carried out as follows :—
The sample shall be mixed and an adequate quantity shall be dried at 100° C., and 20 grams thereof shall then be transferred to the sieve with the lower receiver attached. The sieve shall then be shaken for 10 minutes, with occasional tapping of the sides of the sieve. At the end of 10 minutes the material which has passed through into the lower box shall be carefully brushed out into a suitable vessel and weighed. The receiver shall be replaced and the shaking repeated for another 10 minutes, when the sifted matter shall again be removed, mixed with the first portion and weighed. The process shall be repeated until not more than 0·2 per cent. is sifted during 10 minutes.

Soft lumps which can be caused to crumble by application of the fibres of a bristle brush shall be broken down after each shaking period, but in such manner that the hard parts of the brush do not come into contact with the sieve. The brush shall not be used in any way to brush particles through the sieve.

**Article 12, Fertilisers and Feeding Stuffs Regulations, 1932—
Methods of Analysis of Feeding Stuffs.**

The methods of analysis of a feeding-stuff for the purposes of the Act shall be as follows :—

(i) **Preparation of the sample.**

- (a) If the sample is in a fine condition and passes through a sieve having apertures about 1 millimetre square, it shall be thoroughly mixed and a portion not less than 100 grams in weight shall be placed in a stoppered bottle. From this portion the quantities for analysis shall be taken.
- (b) If the sample does not wholly pass through a sieve having apertures about 1 millimetre square and wholly passes through a sieve having apertures from 2 to 3 millimetres square, it shall be thoroughly mixed and a portion for the determination of the moisture shall be at once taken.

- (c) If the sample is in a coarse condition, as, for example, pieces of broken cake, it shall be carefully pulverised until the whole passes through a sieve having apertures from 2 to 3 millimetres square. It shall then be thoroughly mixed and a portion for the determination of the moisture shall be at once taken.
- (d) From the mixed sample as under (b) above, or from the coarsely crushed sample as prepared under (c) above, a portion not less than 100 grams in weight shall be taken and further powdered and passed through a sieve having apertures about 1 millimetre square. The portion of the sample so prepared shall be placed in a stoppered bottle and from it the quantities for analysis shall be weighed.
- (e) If the original sample is appreciably moist, or if for any reason the operations of pulverisation and mixing are likely to result in loss or gain of moisture, the moisture shall be determined in this prepared portion, as well as in the sample prepared as in paragraph (i)(b) or (c) in order that the results of the analysis may be corrected to correspond with the sample in its original condition as regards moisture.
- (f) Materials which cannot be conveniently pulverised or passed through a sieve shall be thoroughly mixed by the most suitable means.

(ii) **Determination of moisture (loss on drying).**

A weighed quantity of the sample shall be dried at 100° C.

(iii) **Determination of oil.**

- (a) A weighed quantity of the sample shall be placed in an extraction thimble, which shall then be placed in an extraction apparatus and extracted with petroleum spirit b.pt. 40–60° C. At the end of 3 to 4 hours the thimble shall be removed from the apparatus, dried and its contents finely ground, preferably with sand, in a small mortar previously rinsed with petroleum spirit. The substance shall then be returned to the thimble, the mortar being washed out with petroleum spirit and the extraction continued for another hour. The extract should be free from suspended matter. After evaporation of the solvent, the oil shall be dried at 100° C. and weighed.
- (b) In the case of samples containing saccharine matter, the weighed portion in the thimble shall be washed with water and then dried, previous to the extraction.

(iv) **Determination of albuminoids (protein).**

The percentage of albuminoids (protein) shall be ascertained by multiplying the percentage of nitrogen, other than nitrogen present as ammoniacal or nitric nitrogen, by 6.25. The presence of nitrogen in these latter forms shall be tested for and the quantity so present, if any, shall be determined and deducted from the total nitrogen. (See methods for determination of ammoniacal nitrogen and nitric nitrogen in presence of organic matter under Methods of Analysis of Fertilisers, paragraph (iii), *ante*, p. 582.)

The determination of total nitrogen in the absence of nitrates shall be as follows :—

A weighed portion of the sample shall be transferred to a Kjeldahl digestion flask, 25 millilitres of concentrated sulphuric acid (or more if necessary) shall be added and the flask gently heated until frothing ceases. Ten grams of potassium or sodium sulphate (anhydrous) shall then be added and the flask further heated until the colour of the clear liquid ceases to diminish. The heating shall be continued for an hour thereafter to ensure complete oxidation of the organic matter. The operation may be accelerated by the addition of a small crystal of copper sulphate or a globule of mercury to the liquid in the digestion flask.

The quantity of ammonia present in the liquid shall be determined by distillation into standard acid after liberation with alkali and, where mercury has been used, with the addition also of sodium or potassium sulphide solution.

The materials used shall be examined as to their freedom from nitrogen by means of a control experiment carried out under similar conditions with the same quantities of the reagents which have been employed in the actual analysis, 1 gram of pure sugar being used in place of the weighed portion of the sample. The quantity of standard acid found to have been neutralised in this control experiment shall be deducted from the total quantity of acid neutralised in the distillation of the sample.

If nitrates are present, the digestion and subsequent distillation must be carried out as in Methods of Analysis of Fertilisers, paragraph (iii)(b), *ante*, p. 582.

(v) **Determination of phosphoric acid.**

A weighed portion of the sample shall be heated with concentrated sulphuric acid until all organic matter is destroyed and the phosphoric acid is completely in solution. After dilution, the solution shall be filtered, the insoluble matter thoroughly washed and the filtrate made up to a definite bulk. The phosphoric acid shall be determined by the method prescribed in Methods of Analysis of Fertilisers, paragraph (iv)(e), see *ante*, p., 585, in an aliquot part of the solution, which shall first be nearly neutralised and then acidified with nitric acid.

(vi) **Determination of fibre.**

Two or 3 grams, accurately weighed, shall be extracted with petroleum spirit b.-pt. 40–60° C. in an extraction apparatus, or at least three times by stirring, settling and decantation, and the dry residue transferred to a conical 1,000-millilitre flask. The material must not be further ground during extraction. A volume of 200 millilitres of a solution containing 1.25 grams of sulphuric acid (H_2SO_4) per 100 millilitres measured at ordinary temperature and brought to boiling-point, shall be added to the flask and heated. The contents of the flask must come to boiling within 1 minute and the boiling throughout must be gentle and continuous for exactly 30 minutes, the original volume being maintained. The flask shall be rotated every few minutes in order to mix the contents and remove particles from the sides. At the end of 30 minutes the flask shall be removed and the contents poured at once into the shallow layer of hot water remaining in a funnel fitted with a pump-plate or alternatively into the

similar layer remaining in a Buchner funnel. The funnel shall be prepared by cutting a piece of cotton cloth or filter paper to cover the holes, so as to serve as a support for a disc of ordinary filter paper; boiling water shall be poured into the funnel and allowed to remain until the funnel is hot, whereupon suction is applied. The experiment shall be discarded if the time of filtration of the bulk of the 200 millilitres exceeds 10 minutes. The residue shall be washed with boiling water until the washings are free from acid. The residue shall then be washed from the filter paper back into the flask with a volume of 200 millilitres of a solution of sodium hydroxide, containing 1.25 grams of sodium hydroxide (NaOH) per 100 millilitres free or nearly free from sodium carbonate, measured at ordinary temperature, and brought to boiling-point. The contents of the flask shall be boiled for exactly 30 minutes, the precautions given for the treatment with acid being observed. At the end of 30 minutes the flask shall be removed and its contents immediately filtered through an ordinary filter paper. The residue collected on the filter paper shall be washed with boiling water, then with a solution of 1 per cent. hydrochloric acid and again with boiling water until free from acid. The residue shall then be washed twice with 95 per cent. alcohol and three times with ether. The residue shall then be transferred to a dried, weighed, ashless filter paper, dried at about 100° C. in an oven and weighed in its weighing bottle until constant in weight. The ash of the paper and contents shall be determined by incineration at a dull red heat. The weight of ash shall be subtracted from the increase of weight found on the paper and the difference shall be reported as fibre.

(vii) **Determination of sugar.**

- (a) *When the substance is in solid form.*—About 10 grams of the sample or a larger quantity if the percentage of sugar is low, accurately weighed, shall be ground up with water in a mortar and transferred to a 250-millilitre flask, using in all about 200 millilitres of cold water. The flask shall be shaken at intervals during 30 minutes. If it is necessary to use a clearing agent, basic lead-acetate solution followed by sodium sulphate, or alumina cream, free from ammonia, shall be employed. The liquid in the flask shall then be made up to 250 millilitres and filtered. The sugar shall be determined in 50 millilitres of the filtrate by the method prescribed in paragraph (vii)(c).
- (b) *When the substance is in liquid form.*—The prepared portion of the sample shall be thoroughly mixed immediately before weighing out the quantity for sugar determination. About 10 grams of the sample, accurately weighed, shall be washed into a 250 millilitre flask with about 200 millilitres of water and the solution cleared, if necessary, with basic lead-acetate solution followed by sodium sulphate, or alumina cream free from ammonia. The liquid in the flask shall then be made up to 250 millilitres and filtered. The sugar shall be determined in 25 millilitres of the filtrate by the method prescribed in paragraph (vii)(c).

- (c) The aliquot part of the filtrate obtained as described in paragraph (vii)(a) or (b) shall be measured into a 100-millilitre flask and the sugar inverted as follows :—

Five millilitres of hydrochloric acid of 38.3 per cent. strength shall be added and the flask placed in a water-bath maintained at 70° C. The solution in the flask should reach a temperature of 67° to 69° C. in 2½ to 3 minutes. It is maintained at 69° C. for 7 to 7½ minutes, the total period of heating being 10 minutes. It is then cooled at once, neutralised, bulked to 100 millilitres and filtered.

The total reducing sugar in the filtrate is determined either by gravimetric or volumetric process, the total copper-reducing power being calculated in terms of cane sugar ($C_{12}H_{22}O_{11}$).

(viii) **Determination of salt.**

Five grams of the sample shall be mixed with pure lime and heated until the organic matter is completely charred. The residue shall be extracted with water, the volume made up to 250 millilitres and the solution filtered. The chlorine shall be determined in an aliquot portion of the filtrate and the result expressed in terms of NaCl.

(ix) **Determination of sand, siliceous matter or other insoluble mineral matter.**

- (a) A weighed quantity of the sample, from 2 to 5 grams, shall be incinerated and the weight of the ash shall be taken.
- (b) The ash shall be moistened with hydrochloric acid and evaporated to dryness and shall then be repeatedly extracted with hot dilute hydrochloric acid (one part of concentrated hydrochloric acid to four parts of water). The solution shall be filtered and the insoluble matter washed, incinerated and weighed. The quantity obtained shall be taken as sand and siliceous matter.
- (c) Where the quantity of sand and silica-free ash is so high as to raise a presumption that mineral matter has been added, the nature and quantity of such added substances shall, if possible, be determined.

Tampering with samples.—A person is liable to a fine not exceeding £50 or to imprisonment for a term not exceeding six months, if he fraudulently tampers with any article so as to procure that any samples of it taken under the Act of 1926 do not correctly represent that article, or tampers or interferes with any sample taken for analysis(o).

Analyst's certificate.—The forms of certificate to be used by agricultural analysts have been prescribed by the Minister(p).

Evidence of certificate of analysts.—Where a sample, which has been taken in the prescribed manner (see *ante*, p. 574) by an inspector or official sampler, and has been divided into parts, etc., in accordance with the provisions of section 13 of

(o) Sect. 14, Fertilisers and Feeding Stuffs Act, 1926; 1 Halsbury's Statutes 149.

(p) Art. 14 and Forms A & B, Schedule, Fertilisers and Feeding Stuffs Regulations, 1932; S.R. and O., 1932, No. 658.

the Act of 1926 (see *ante*, p. 579), has been analysed by the agricultural analyst, his certificate is sufficient evidence of the facts stated therein, unless the person charged requires that the person who made the analysis be called as a witness, or that the same be further analysed by the Government Chemist. Similarly, the Government Chemist's certificate must be accepted unless either party requires that the person who made the analysis be called as a witness(*q*).

CIVIL LIABILITIES.

The principal object of the Act of 1926 is to afford adequate protection to purchasers by means of civil liabilities which are imposed on sellers.

Statutory statements.—It is the duty of every person who sells any article for use as a fertiliser of the soil or as food for cattle(*r*) or poultry, any article included in the First or Second Schedules to the Act of 1926, to furnish a statutory statement in accordance with section 1 of the Act of 1926, *infra*.

Section 1, Fertilisers and Feeding Stuffs Act, 1926.—Obligation to furnish statutory statements.

- (1) It shall be the duty of every person who sells for use as a fertiliser of the soil or as food for cattle or poultry any article included in the first column of the First or Second Schedule to this Act, whatever may be the name under which the article is sold, to give the purchaser on or before delivery, or as soon as reasonably practicable thereafter, a statement in writing (hereinafter referred to as a statutory statement) in such form (if any) as may be prescribed, containing the following particulars :—

- (a) the name under which the article is sold ;
- (b) such particulars (if any) of the nature, substance or quality of the article as are in relation to the article mentioned in the second column of such schedule ;
- (c) where the article, if a feeding-stuff, contains any ingredient included in the Third Schedule to this Act, the name of such ingredient ;

Provided that the obligation so imposed shall not apply—

- (i) to sales of two or more articles which are mixed at the request of the purchaser before delivery to him ;
- (ii) to sales of small quantities (that is to say, in quantities of fifty-six pounds or less) if the article sold is taken in the presence of the purchaser from a parcel bearing a conspicuous label on which are marked in the prescribed manner the particulars required by this section to be contained in the statutory statement.

(*q*) Sect. 22, Fertilisers and Feeding Stuffs Act, 1926 ; 1 Halsbury's Statutes 152.

(*r*) "Cattle" means bulls, cows, oxen, heifers, calves, sheep, goats and swine—sect. 26(1), Fertilisers and Feeding Stuffs Act, 1926 ; 1 Halsbury's Statutes 154.

- (2) Failure to give a statutory statement in accordance with the provisions of this section shall not invalidate a contract for sale.

In the case of sales of small quantities to which section 1(1)(ii), *supra*, applies, the label must bear the particulars prescribed in that section in block capital letters and figures not less than half-an-inch long(s).

The Schedules, as amended by the Fertilisers and Feeding Stuffs Regulations, 1932(*t*), are as follows :—

First Schedule, Fertilisers and Feeding Stuffs Act, 1926.—Articles to which all the Provisions of the Act are applicable.

PART I—FERTILISERS.

<i>Article.</i>	<i>Particulars to be contained in Statutory Statement.</i>
Basic slag	Amount of phosphoric acid. Amount of the article that will pass through a prescribed sieve.
Basic superphosphate	Amount of phosphoric acid.
Bone meal or other product (excluding dissolved or vitriolised bone) obtained by grinding or otherwise treating bone, used for fertilising purposes.	Amount of nitrogen and phosphoric acid respectively.
Calcium cyanamide	Amount of nitrogen.
Compound fertilisers, that is to say, mixtures of any article or of two or more articles mentioned in this Part of this Schedule or in Part I of the Second Schedule with any other such article or articles or with any other substance.	Amounts (if any) of nitrogen, potash, soluble phosphoric acid and insoluble phosphoric acid (if any) respectively.
Dissolved or vitriolised bone ..	Amounts of nitrogen, soluble phosphoric acid and insoluble phosphoric acid respectively.
Fish residues or other product obtained by drying and grinding or otherwise treating fish or fish waste, used for fertilising purposes.	Amounts of nitrogen and phosphoric acid respectively.
Guano, including Peruvian and other raw guanos.	Amounts of nitrogen, phosphoric acid and potash respectively.
Hoofs	Amount of nitrogen.
Hoofs and horns	Amount of nitrogen.
Horns	Amount of nitrogen.

(s) Art. 1, Fertilisers and Feeding Stuffs Regulations, 1932 ; S.R. and O., 1932, No. 658.

(t) S.R. and O., 1932, No. 658 ; Art. 15

<i>Article.</i>	<i>Particulars to be contained in Statutory Statement.</i>
Meat and bone residues or any product not specifically mentioned elsewhere in this Part of this Schedule obtained by drying and grinding or otherwise treating bone, flesh, flesh fibre (including whale meat) and other slaughterhouse residues, used for fertilising purposes.	Amount of nitrogen and phosphoric acid respectively.
Nitrate of lime	Amount of nitrogen.
Nitrate of soda	Amount of nitrogen.
Oil-seed fertilisers, including castor meal, mowrah meal, rape meal, or any residue which is obtained by the removal of oil from seeds.	Amount of nitrogen.
Potassium salts used as fertilisers including kainit, extra kainit, sylvinite, potash manure salt, muriate of potash, sulphate of potash and sulphate of potash-magnesia.	Amount of potash.
Raw phosphate or phosphate rock, ground or unground.	Amount of phosphoric acid. Amount that will pass through a prescribed sieve.
Sulphate of ammonia	Amount of nitrogen and amount of free acid.
Superphosphate	Amount of soluble phosphoric acid.

The provisions of this Part of this Schedule shall apply to any article described therein under whatever name it may be sold or offered for sale and notwithstanding that it contains a substance not mentioned in this Part of this Schedule.

The amount, in each case, is to be stated as a definite percentage of the weight of the article and not as a range of percentages.

Nitrogen is to be stated in terms of nitrogen.

Phosphoric acid, soluble phosphoric acid and insoluble phosphoric acid are to be stated in terms of phosphoric anhydride (P_2O_5).

Potash is to be stated in terms of potassium oxide (K_2O).

Free acid is to be stated in terms of sulphuric acid (H_2SO_4).

PART II—FEEDING-STUFFS.

<i>Article.</i>	<i>Particulars to be contained in Statutory Statement.</i>
Barley meal	None.
Barley meal, Grade II	None.
Bean meal	None.

<i>Article.</i>	<i>Particulars to be contained in Statutory Statement.</i>
Coconut or copra cake or meal	Amounts of oil and albuminoids (protein) respectively.
Compound cakes or meals, that is to say, any cakes or meals (other than molasses feeds) consisting of a mixture of any article or of two or more articles mentioned in this Part of this Schedule or in Part II of the Second Schedule with any other such article or articles, or with any other substance, or any cakes or meals produced by grinding, crushing or otherwise treating together, or by mixing together after being separately crushed, ground or otherwise separately treated, any two or more raw materials out of which such articles are produced or any one or more of such materials with any other substance or substances.	Amounts (if any) of oil, albuminoids (protein) and fibre respectively.
Cotton cakes or meals, not decorticated.	Amounts of oil and albuminoids (protein) respectively.
Cotton cakes or meals from decorticated or partly decorticated cotton seed.	Amounts of oil, albuminoids (protein) and fibre respectively.
Dari or durra meal	None.
Dried sugar-beet residue ..	Amount of fibre.
Feeding bone-flour	Amounts of phosphoric acid and albuminoids (protein) respectively.
Feeding bone-meal, ground bone or any other bone product for feeding purposes.	Amounts of phosphoric acid and albuminoids (protein) respectively.
Feeding meat and bone-meal or any other product of meat (including whale meat) and bone for feeding purposes.	Amounts of oil, albuminoids (protein) and phosphoric acid respectively.
Feeding meat meals or any other product of meat (including whale meat) for feeding purposes.	Amounts of oil, albuminoids (protein) and phosphoric acid respectively.
Fish meal, white fish meal or other product obtained by drying and grinding or otherwise treating fish or fish waste.	Amount of albuminoids (protein), phosphoric acid, oil and salt respectively.
Ground oats	None.
Linseed cakes and the meals of such cakes.	Amounts of oil and albuminoids (protein) respectively.

<i>Article.</i>	<i>Particulars to be contained in Statutory Statement.</i>
Linseed meal	Amount of oil.
Locust-bean meal	None.
Maize by-products not otherwise specifically mentioned in this Schedule.	Amounts of oil, albuminoids (protein) and fibre respectively.
Maize, flaked	Amounts of oil and albuminoids (protein) respectively.
Maize germ-cake or meal ..	Amounts of oil and albuminoids (protein) respectively.
Maize gluten feed	Amounts of oil and albuminoids (protein) respectively.
Maize meal ; Indian meal ..	None.
Molasses feeds, including any feeding - stuffs, composed of treacle or molasses with an absorbent, containing not less than 10 per cent. of sugar.	Amounts of sugar and fibre respectively.
Oil cakes or meals not otherwise specifically mentioned in this Schedule which are the product of any one undecorticated substance or seed from which oil has been removed.	Amounts of oil and albuminoids (protein) respectively.
Oil cakes or meals not otherwise specifically mentioned in this Schedule which are the product of any one decorticated or partly decorticated substance or seed from which oil has been removed.	Amounts of oil, albuminoids (protein) and fibre respectively.
Palm kernel cake or meal ..	Amounts of oil and albuminoids (protein) respectively.
Pea meal	None.
Rape cake or meal	Amounts of oil and albuminoids (protein) respectively.
Rice bran or rice meal or the by-product produced in milling shelled rice.	Amounts of oil, albuminoids (protein) and fibre respectively.
Soya cake or meal	Amounts of oil and albuminoids (protein) respectively.
Treacle or molasses	Amount of sugar.
Wheat meal	None.
Wheat offals or millers' offals ..	Amount of fibre.

The provisions of this Part of this Schedule shall apply to any article described therein under whatever name it may be sold or offered for sale and notwithstanding that it contains a substance not mentioned in this Part of this Schedule.

The amount, in each case, is to be stated as a definite percentage of the weight of the article and not as a range of percentages.

Phosphoric acid is to be stated in terms of phosphoric anhydride (P_2O_5).

Amount of albuminoids (protein) means the amount of nitrogen other than ammoniacal or nitric nitrogen, if present, multiplied by 6·25.

Whatever albuminoids are stated in accordance with the provisions of this Part of this Schedule the word "albuminoids" is to be followed by the expression "(protein)."

It should be noted that the articles in the First Schedule are also subject to the marking requirements (see *post*, p. 614) and generally to the provisions of the Act of 1926 relating to criminal liabilities (see *post*, p. 614).

Second Schedule, Fertilisers and Feeding Stuffs Act, 1926.—Articles to which some only of the Provisions of the Act are applicable.

PART I—FERTILISERS.

<i>Article.</i>	<i>Particulars to be contained in Statutory Statement.</i>
Calcium hydrate; calcium hydroxide; slaked lime.	Amount of calcium hydroxide and equivalent of calcium oxide.
Chalk, ground	Amount of calcium carbonate and equivalent of calcium oxide.
Dried blood for fertilising purposes.	Amount of nitrogen.
Dried carbonate of lime not otherwise specifically mentioned in this Schedule.	Amount of calcium carbonate and equivalent of calcium oxide.
Lime mixtures containing two or more of the forms of lime mentioned in this Schedule, but not including waste lime sold as such.	Total amount of calcium (expressed as calcium oxide) present as calcium oxide, calcium hydroxide and calcium carbonate.
Limestone, ground	Amount of calcium carbonate and equivalent of calcium oxide. Amount that will pass through a prescribed sieve.
Precipitated bone	Amount of phosphoric acid.
Quicklime, ground or otherwise	Amount of calcium oxide.
Shoddy	None.

The provisions of this Part of this Schedule shall apply to any article described therein under whatever name it may be sold or offered for sale, and notwithstanding that it contains a substance not mentioned in this Part of this Schedule.

The amount, in each case, is to be stated as a definite percentage of the weight of the article and not as a range of percentages.

Nitrogen is to be stated in terms of nitrogen.

Phosphoric acid is to be stated in terms of phosphoric anhydride (P_2O_5).

Calcium carbonate is to be stated in terms of calcium carbonate ($CaCO_3$).

Calcium hydroxide is to be stated in terms of calcium hydroxide ($\text{Ca}(\text{HO})_2$).

Calcium oxide is to be stated in terms of calcium oxide (CaO).

PART II—FEEDING-STUFFS.

<i>Article.</i>	<i>Particulars to be contained in Statutory Statement.</i>
Alfalfa (lucerne) meal	Amount of fibre.
Clover meal	Amount of fibre.
Dried brewery and distillery grains.	Amounts of oil and albuminoids (protein) respectively.
Dried yeast	Amount of albuminoids (protein).
Feeding dried blood	Amount of albuminoids (protein).
Malt culms	Amounts of albuminoids (protein) and fibre respectively.

The provisions of this Part of this Schedule shall apply to any article described therein under whatever name it may be sold or offered for sale and notwithstanding that it contains a substance not mentioned in this Part of this Schedule.

The amount, in each case, is to be stated as a definite percentage of the weight of the article and not as a range of percentages.

Amount of albuminoids (protein) means the amount of nitrogen, other than ammoniacal or nitric nitrogen, if present, multiplied by 6.25.

Whatever albuminoids are stated in accordance with the provisions of this Part of this Schedule the word "albuminoids" is to be followed by the expression "(protein)."

It will be seen that the statutory statement must contain the name of any ingredient included in the Third Schedule^(u) to the Act of 1926, *infra*.

Third Schedule, Fertilisers and Feeding Stuffs Act, 1926.—Ingredients in Feeding-Stuffs the presence of which must be declared.

- (a) Husks, chaff, glumes, shudes, hulls, nutshells or skins of nuts, from any source, whether ground or unground, treated or untreated, when used as separate ingredients or artificial mixtures in the manufacture of feeding-stuffs.

Where the kernels naturally associated in seeds with one or other of the above materials are present in a feeding-stuff along with the materials with which they are so associated, regard shall be had to the proportion of the above materials that might reasonably be expected to accompany such kernels when the seed from which they are derived is in its natural condition, provided that feeding in this condition is regarded as a common practice in the feeding of livestock.

- (b) Peat, peat moss, spent hops or sugar-cane pith, treated or untreated, ground, or otherwise.
 (c) Wheat or rye straw, ground or otherwise.
 (d) Sawdust or any other form of wood, treated or untreated.

(u) Amended by Art. 15, *ibid*.

The form of statutory statement has not been prescribed.

The obligation to supply a statutory statement applies not only to those articles bearing the names in the first column of the First and Second Schedules, *supra*, but to such articles whatever name they may bear. The entries in the Schedules are in the nature of descriptions of the articles and not precise names. It follows, therefore, that the use of a trade or "fancy" name does not remove the obligation to supply a statutory statement.

Warranties.—Section 2 of the Act of 1926, *infra*, provides that a statutory statement given by the seller has effect as a written warranty.

Section 2, Fertilisers and Feeding Stuffs Act, 1926.—Warranties.

- (1) A statutory statement given by the seller of any such article as aforesaid shall, notwithstanding any contract or notice to the contrary, have effect as a written warranty by the seller that the particulars contained in the statutory statement are correct.
- (2) On the sale for use as food for cattle or poultry of an article included in the first column of the First or Second Schedule to this Act there shall be implied, notwithstanding any contract or notice to the contrary, a warranty by the seller that the article is suitable to be used as such, and does not, except as otherwise expressly stated in the statutory statement, contain any ingredient included in the Third Schedule to this Act.
- (3) Where an article sold for use as a fertiliser of the soil or as food for cattle or poultry is in a statutory statement or other document described by a name specified in the first column of the Fourth Schedule to this Act, the sale of the article under that name shall have effect as a written warranty that the article accords with the definition thereof contained in the second column of that Schedule.
- (4) Any statement as to the amount of chemical or other ingredients or as to the fineness of grinding of an article sold for use as a fertiliser of the soil, or as to the amount of the nutritive or other ingredients of an article sold for use as food for cattle or poultry, which is made after the commencement of this Act in any written document (other than a statutory statement) descriptive of the article shall have effect as a warranty by the seller that the facts stated are correct.
- (5) No action on any such warranty as is mentioned in this section shall lie for any mis-statement therein as to the particulars of the nature, substance or quality of the article or as to the amount of any ingredient where the mis-statement does not exceed the limits of variation (if any) prescribed under this Act in relation to such particulars or amounts, but where the mis-statement exceeds such limits the rights of the purchaser under the warranty shall not be affected by such limits.

It will be seen that the statutory statement acts as a warranty in a number of ways—

- 1—That the particulars contained in the statutory statement are correct, subject to the limits of variation allowed (see *infra*)—section 2(1) and (5) ;

- 2—Where the article is a feeding-stuff, that it is suitable for that purpose—section 2(2)(v) ;
- 3—In the case of an article sold by a name specified in the first column of the Fourth Schedule (see *post*, p. 609) that the article accords with the definition thereon contained in the second column of that Schedule—section 2(3) ; and
- 4—That any statement as to the amount of valuable or other ingredient of a fertiliser or feeding-stuff, which is made in any written document other than a statutory statement, is correct—section 2(4).

The limits of variation allowed have been prescribed by the Minister(*w*) as follows :—

Article 2, Fertilisers and Feeding Stuffs Regulations, 1932.—Limits of Variation.

The limits of variation for the purposes of sections 2(5) and 26(5) of the Act shall be as follows :—

LIMIT OF VARIATION FOR FERTILISERS.

Article.	Limits of Variation (expressed as percentages of the whole bulk).				
	Nitrogen.	Soluble phosphoric acid.	Insoluble phosphoric acid.	Phosphoric acid.	Potash.
1—Calcium cyanamide ..	0·5	—	—	—	—
2—Dried blood for fertilising purposes	0·5	—	—	—	—
3—Nitrate of lime ..	0·5	—	—	—	—
4—Nitrate of soda ..	0·3	—	—	—	—
5—Oil-seed fertiliser, as described in the First Schedule to the Act ..	0·5	—	—	—	—
6—Hoofs	0·5	—	—	—	—
7—Hoofs and horns ..	0·5	—	—	—	—
8—Horns	0·5	—	—	—	—
9—Superphosphate ..	—	0·5	—	—	—
10—Basic superphosphate ..	—	—	—	1	—
11—Precipitated bone ..	—	—	—	1	—
12—Potassium salts used as fertilisers, as described in the First Schedule to the Act :—					
(a) if the percentage of potash stated does not exceed 15 ..	—	—	—	—	1
(b) If such percentage exceeds 15 ..	—	—	—	—	2

(v) This is not restricted to cases where the purchaser uses the feeding-stuffs as food for cattle but applies also where he resells the food—*Dobell (G. C.) & Co., Ltd. v. Barber and Garratt*, [1931] 1 K.B. 219 ; Digest Supp

(w) Art. 2, Fertilisers and Feeding Stuffs Regulations, 1932 ; S.R. and O., 1932, No. 658.

Article.	Limits of Variation (expressed as percentages of the whole bulk).				
	Nitro- gen.	Soluble phos- phoric acid.	Insol- uble phos- phoric acid.	Phos- phoric acid.	Potash.
13—Compound fertilisers, as described in the First Schedule to the Act :—					
(a) If neither the percentage of nitrogen nor the percentage of potash stated exceeds 4	0·3	0·5	0·5	—	0·3
(b) If the percentage of nitrogen stated does not exceed 4 and the percentage of potash stated exceeds 4 but does not exceed 5	0·3	0·5	0·5	—	0·5
(c) If the percentage of nitrogen stated does not exceed 4 and the percentage of potash stated exceeds 5	0·3	0·5	0·5	—	0·75
(d) If the percentage of potash does not exceed 4 and the percentage of nitrogen stated exceeds 4 but does not exceed 5	0·5	0·5	0·5	—	0·3
(e) If the percentage of potash stated does not exceed 4 and the percentage of nitrogen stated exceeds 5	0·75	0·5	0·5	—	0·3
(f) If the percentages of nitrogen and potash stated both exceed 4 but neither of them exceeds 5	0·5	0·5	0·5	—	0·5
(g) If the percentage of nitrogen stated exceeds 4 but does not exceed 5 and the percentage of potash stated exceeds 5	0·5	0·5	0·5	—	0·75
(h) If the percentage of potash stated exceeds 4 but does not exceed 5 and the percentage of nitrogen stated exceeds 5	0·75	0·5	0·5	—	0·5

Article.	Limits of Variation (expressed as percentages of the whole bulk).				
	Nitro- gen.	Soluble phos- phoric acid.	Insol- uble phos- phoric acid.	Phos- phoric acid.	Potash.
(i) If the percentages of nitrogen and potash stated each exceed 5	0.75	0.5	0.5	—	0.75
14—Dissolved or vitriolised bone—					
(i) When the total of the percentages of phosphoric acid (soluble and insoluble) stated amounts to 14 or more, then—					
(a) If the excess of the actual percentage of insoluble phosphoric acid over that stated is 1.5 or more	0.3	2	—	—	—
(b) If such excess is not less than 1, but is less than 1.5	0.3	1.5	—	—	—
(c) If such excess is not less than 0.5 but is less than 1	0.3	1	—	—	—
(ii) In all other cases..	0.3	0.5	0.5	—	—

Article.	Limits of Variation (percentages are percentages of the whole bulk).
15—Sulphate of ammonia ..	Nitrogen 0.3 per cent. ; free acid, one-fifth of the quantity stated.
16—Basic slag	Phosphoric acid, 1 per cent. ; amount that will pass through a prescribed sieve, one-twentieth of the amount stated.
17—Raw phosphate or phosphate rock.	Phosphoric acid, one-twentieth of the amount stated ; amount that will pass through a prescribed sieve, one-twentieth of the amount stated.

Article.	Limits of Variation (percentages are percentages of the whole bulk).
18—Guano, including Peruvian and other raw guanos.	Nitrogen, one-fifth of the percentage stated, with a minimum of 0·25 per cent. and a maximum of 1·5 per cent. ; phosphoric acid, one-tenth of the percentage stated, with a maximum of 2 per cent. ; and potash, one-fifth of the percentage stated.
19—Bone meal or other bone product (excluding dissolved or vitriolised bone) as described in the First Schedule to the Act.	Nitrogen, 0·5 per cent. increasing, if the actual percentage of phosphoric acid exceeds that stated, to not more than 1 per cent. at the rate of 0·25 per cent. of nitrogen for each 1 per cent. of such excess of phosphoric acid ; and phosphoric acid, 1 per cent. increasing, if the actual percentage of nitrogen exceeds that stated, to not more than 2 per cent. at the rate of 1 per cent. of phosphoric acid for each 0·25 per cent. of such excess of nitrogen.
20—Fish residues or other fish product, as described in the First Schedule to the Act.	Nitrogen, 0·5 per cent., increasing, if the actual percentage of phosphoric acid exceeds that stated, to not more than 2 per cent. at the rate of 0·25 per cent. of nitrogen for each 1 per cent. of such excess of phosphoric acid ; and phosphoric acid, 1 per cent. increasing, if the actual percentage of nitrogen exceeds that stated, to not more than 3 per cent., at the rate of 1 per cent. of phosphoric acid for each 0·25 per cent. of such excess of nitrogen.
21—Meat and bone residues as described in the First Schedule to the Act.	
22—Calcium hydrate ; calcium hydroxide ; slaked lime.	Calcium hydroxide and equivalent of calcium oxide, one-tenth of the amounts stated.
23—Chalk, ground .. 24—Dried carbonate of lime, as described in the Second Schedule to the Act	Calcium carbonate and equivalent of calcium oxide, one-twentieth of the amounts stated.
25—Limestone, ground ..	Calcium carbonate and equivalent of calcium oxide, one-twentieth of the amounts stated ; amount that will pass through a prescribed sieve, one-twentieth of the amount stated.
26—Lime mixtures .. 27—Quicklime, ground or otherwise.	Calcium oxide, one-tenth of the amount stated.

LIMITS OF VARIATION FOR FEEDING-STUFFS.

Article.	Limits of Variation.
1—Linseed meal	One-tenth of the amount of oil stated.
2—Dried yeast ..	One-twentieth of the amount of albuminoids (protein) stated.
3—Feeding dried blood ..	
4—Dried brewery and distillery grains.	One-fifth of the respective amounts of oil and albuminoids (protein) stated.
5—Linseed cakes and the meals of such cakes.	One-eighth of the respective amounts of oil and albuminoids (protein) stated.
6—Maize, flaked ..	
7—Maize germ-cake or meal	
8—Maize gluten feed ..	
9—Rape cake or meal	
10—Soya cake or meal	
11—Coconut or copra cake or meal.	One-tenth of the respective amounts of oil and albuminoids (protein) stated.
12—Cotton cakes or meals, not decorticated.	
13—Oil cakes or meals not otherwise specifically mentioned which are the product of any one undecorticated substance or seed from which oil has been removed.	
14—Palm kernel cake or meal	
15—Compound cakes or meals as described in the First Schedule to the Act.	One-tenth of the respective amounts of oil and albuminoids (protein) and one-eighth of the amount of fibre stated.
16—Cotton cakes or meals from decorticated or partly decorticated cotton seed.	
17—Maize by-products not otherwise specifically mentioned.	
18—Oil cakes or meals not otherwise specifically mentioned which are the product of any one decorticated or partly decorticated substance or seed from which oil has been removed.	One-tenth of the respective amounts of phosphoric acid and one-tenth of the amount of albuminoids (protein) stated.
19—Rice bran or rice meal, or the by-product produced in milling shelled rice.	
20—Feeding bone flour ..	One-tenth of the respective amounts of phosphoric acid and albuminoids (protein) stated.
21—Feeding bone meal ; ground bone.	

Article.	Limits of Variation.
22—Feeding meat meal	One-tenth of the respective amounts of oil, albuminoids (protein)(<i>x</i>) and phosphoric acid stated.
23—Feeding meat and bone meal.	
24—Fish meal, as described in the First Schedule to the Act.	One-tenth of the respective amounts of albuminoids (protein), oil and salt(<i>y</i>) and one-sixth of the amount of phosphoric acid stated.
25—Malt culms	One-fifth of the amount of albuminoids (protein) and one-eighth of the amount of fibre stated.
26—Treacle or molasses ..	One-twentieth of the amount of sugar stated.
27—Molasses feeds, as described in the First Schedule to the Act.	One-tenth of the amount of sugar and one-eighth of the amount of fibre stated.
28—Alfalfa (lucerne) meal	One-eighth of the amount of fibre stated.
29—Clover meal ..	
30—Dried sugar-beet residue	
31—Wheat offals, or millers' offals.	

The articles described in the Fourth Schedule(*z*) to the Act of 1926 are as follows :—

Fourth Schedule, Fertilisers and Feeding Staffs Act, 1926.—Definitions implied on the Sale of Articles under certain names.

PART I—FERTILISERS.

<i>Name under which Article sold.</i>	<i>Implied Definition.</i>
Basic slag	A by-product, containing phosphorus, obtained in the manufacture of steel and to which no addition has been made at the time of leaving or after it has left the furnace.
Basic superphosphate ..	A non-acid phosphate produced by mixing lime with superphosphate of lime and to which no other matter has been added.

(*x*) The Limits of Variation in respect of albuminoids (protein) in feeding meal and feeding meat and bone meal shall apply in the case of statements of percentages made in compliance with the Act in the case of feeding meat meal and feeding meat and bone meal, but shall not operate so as to permit of the application of the names "feeding meat meal" and "feeding meat and bone meal" to articles containing less than 55 per cent. and less than 40 per cent. of albuminoids (protein) respectively.

(*y*) The Limits of Variation in respect of oil and salt in fish meal shall apply in the case of statements of percentages made in compliance with the Act in the case of fish meal, including white fish meal, but shall not operate so as to permit of the application of the name "white fish meal" to an article containing more than 6 per cent. of oil or 4 per cent. of salt.

(*z*) Amended by Art. 15, Fertilisers and Feeding Staffs Regulations, 1932; S.R. and O., 1932, No. 658.

<i>Name under which Article sold.</i>	<i>Implied Definition.</i>
Bone meal	Commercially pure bone, raw or degreased, which has been ground or crushed.
Calcium cyanamide	Commercial calcium cyanamide.
Calcium hydrate; calcium hydroxide; slaked lime ..	Commercial hydroxide of lime.
Castor meal	The residue which is obtained by the removal of oil from commercially pure castor seed.
Chalk, ground	The product obtained by grinding cretaceous limestone, to which no other matter has been added.
Compound fertilisers ..	Mixtures of any article or of two or more articles mentioned in Part I of the First Schedule or in Part I of the Second Schedule with any other such article or articles or with any other substance.
Dissolved or vitriolised bone	Commercially pure bone which has been treated with sulphuric acid.
Dried-blood manure ..	Blood which has been dried, to which no other matter has been added.
Dried carbonate of lime not otherwise specifically mentioned in Part I of the Second Schedule.	A product, consisting principally of calcium carbonate, arising as a by-product in manufacturing and other processes.
Fish guano, fish manure ..	A product obtained by drying and grinding or otherwise treating fish or fish waste, to which no other matter has been added.
Hoofs	The product obtained by crushing or grinding hoof, to which no other matter has been added.
Hoofs and horns	A mixture of hoof and horn, crushed or ground, to which no other matter has been added.
Horns	The product obtained by crushing or grinding horn, to which no other matter has been added.
Limestone, ground	The product obtained by grinding sedimentary rock consisting largely of carbonate of lime, to which no other matter has been added.
Meat and bone manure; meat meal; carcase meal.	The product of drying and grinding or otherwise treating bone, flesh, flesh fibre (including whale meat) and other slaughterhouse residues, to which no other matter has been added.
Mowrah meal	The residue which is obtained by the removal of oil from commercially pure mowrah seed.
Muriate of potash	Potassium chloride for fertilising purposes.
Nitrate of lime	Calcium nitrate for fertilising purposes.
Nitrate of soda	Sodium nitrate for fertilising purposes.
Precipitated bone	An insoluble calcium phosphate prepared by treating commercially pure bone with acid, and precipitation of phosphate from the solution.
Quicklime, ground or otherwise.	Commercial calcium oxide.

<i>Name under which Article sold.</i>	<i>Implied Definition.</i>
Rape meal	The residue which is obtained by the removal of oil from commercially pure rape seed.
Raw guano	The excrement and remains of birds, containing both nitrogen and phosphorus, prepared for use by screening where necessary, but to which no addition has been made.
Raw phosphate or phosphate rock, ground or otherwise.	The substance obtained from mineral calcium phosphate deposits, to which no other matter has been added.
Shoddy manure; wool waste; wool combings; wool manure; flock dust.	Waste of wool, or of wool mixed with fibrous materials such as are associated with wool in the textile industries, to which no other matter has been added.
Steamed bone flour; steamed bone meal.	Commercially pure bone from which nitrogen has been removed by steam.
Sulphate of ammonia	Ammonium sulphate for fertilising purposes.
Sulphate of potash	Potassium sulphate for fertilising purposes.
Superphosphate	A mineral substance containing soluble phosphate of lime.

PART II—FEEDING-STUFFS.

<i>Name under which Article sold.</i>	<i>Implied Definition.</i>
Alfalfa (lucerne) meal	Alfalfa (lucerne), as grown, dried and ground, to which no other matter has been added.
Barley meal	The meal obtained by grinding barley, as grown, which shall be the whole grain together with only such other substances as may reasonably be expected to have become associated with the grain in the field; the meal to contain not less than 96 per cent. pure barley.
Barley meal, Grade II.	The meal, other than barley meal as defined above, obtained by grinding barley, as grown, which shall be the whole grain together with only such other substances as may reasonably be expected to have become associated with the grain in the field; the meal to contain not less than 90 per cent. pure barley.
Bean meal	The meal obtained by grinding commercially pure beans of the species (1) <i>Vicia Faba</i> (synonym <i>Faba vulgaris</i>) or any of its varieties, commonly known as "horse bean," "field bean," or "broad bean"; or (2) <i>Phaseolus vulgaris</i> , the "true haricot bean" or any of its varieties, white or coloured.
Clover meal	Whole clover, as grown, dried and ground, to which no other matter has been added.

<i>Name under which Article sold.</i>	<i>Implied Definition.</i>
Compound cakes or meals ..	Cakes or meals (other than molasses feeds) consisting of a mixture of any article or of two or more articles mentioned in Part II of the First Schedule or in Part II of the Second Schedule with any other substance, or any cakes or meals produced by grinding, crushing or otherwise treating together, or by mixing together, after being separately crushed, ground or otherwise separately treated, any two or more raw materials out of which such articles are produced or any one or more of such materials with any other substance or substances.
Cotton cakes or meals not decorticated.	The residue resulting from the removal of oil from commercially pure cotton seed, not decorticated.
Cotton cakes or meals from decorticated or partly decorticated cotton seed.	The residue resulting from the removal of oil from commercially pure cotton seed from which the cortex, in whole or in part, has been removed.
Dari meal ; durra meal ..	The meal obtained by grinding commercially pure dari or durra seed.
Dried brewery grains ..	The article produced by drying the residue of malted and unmalted cereals used in brewing, to which no other matter has been added.
Dried distillery grains ..	The article produced by drying the residue from distillery mash-tuns, to which no other matter has been added.
Dried sugar-beet residue ..	The article produced by drying the sugar beet residue produced in the manufacture of sugar from sugar beet.
Dried yeast	An article produced by drying yeast or yeast residues, to which no other matter has been added.
Feeding bone flour	The product obtained by grinding commercially pure steamed bone.
Feeding bone meal ; ground bone.	Commercially pure bone, raw or degreased, which has been ground or crushed.
Feeding dried blood.. ..	Blood which has been dried, to which no other matter has been added.
Feeding meat and bone meal	The product, containing not less than 40 per cent. of albuminoids (protein) and not more than 4 per cent. of salt, obtained by drying and grinding animal carcasses or portions thereof (excluding hoof and horn) and bone, to which no other matter has been added.
Feeding meat meal	The product, containing not less than 55 per cent. of albuminoids (protein) and not more than 4 per cent. of salt, obtained by drying and grinding animal carcasses or portions thereof (excluding hoof and horn) to which no other matter has been added.
Fish meal ; fish-residue meal	A product obtained by drying and grinding or otherwise treating waste of fish, to which no other matter has been added.

<i>Name under which Article sold.</i>	<i>Implied Definition.</i>
Flaked maize	The product obtained by cooking and flaking commercially pure maize or Indian corn, either as grown or from which the germ, in whole or in part, has been removed.
Ground oats	The meal obtained by grinding commercially pure oats, as grown.
Linseed cakes or the meals of such cakes.	The residue resulting from the removal of oil from commercially pure linseed.
Linseed meal.. ..	The meal obtained by grinding or crushing commercially pure linseed.
Locust bean meal	The meal obtained by grinding or crushing commercially pure locust beans.
Maize-germ cake or meal ..	The residue resulting from the removal of oil from maize germs, to which no other matter has been added.
Maize gluten feed	A by-product resulting from the removal of starch and germ from maize, to which no other matter has been added.
Maize meal ; Indian meal ..	The meal obtained by grinding commercially pure maize or Indian corn, as grown.
Malt culms	The rootlets and shoots arising from the screening of malt, to which no other matter has been added.
Molasses feeds	Any mixture, containing not less than 10 per cent. of sugar, of an absorbent material and treacle or molasses.
Nut cakes or meals, including coconut, copra, palm kernel and ground nut cakes and meals.	The residue resulting from the removal of oil from commercially pure nut kernels.
Pea meal	The meal obtained by grinding commercially pure peas, as grown, of varieties of " <i>Pisum sativum</i> " or " <i>Pisum arvense</i> ."
Rape cake or meal	The residue resulting from the removal of oil from commercially pure rape seed.
Rice bran ; rice meal ..	The by-product produced in milling shelled rice, to which no other matter has been added.
Soya cake or meal	The residue resulting from the removal of oil from commercially pure soya beans.
Sugar-beet treacle—sugar-beet molasses.	A concentrated syrup product obtained in the manufacture of sugar from sugar beet, to which no other matter has been added.
Sugar-cane treacle ; sugar cane-molasses.	A concentrated syrup product obtained in the manufacture of sugar from sugar cane, to which no other matter has been added.
Wheat meal	The meal obtained by grinding commercially pure wheat, as grown.
Wheat offals ; millers' offals	A product of wheat separated in the process of milling and containing not more than 4 per cent. of vegetable substances, other than wheat, extracted from wheat in the process of cleaning by the maker of the offals in the production of flour.

Name under which Article sold.	Implied Definition.
White fish meal	A product (containing not more than 6 per cent. of oil and not more than 4 per cent. of salt) obtained by drying and grinding or otherwise treating waste of white fish, and to which no other matter has been added.

In the case of every article in this Schedule the definition of which includes the expression "commercially pure" it is implied that no other matter may be added.

CRIMINAL LIABILITIES.

Marking of articles prepared for consignment.—Section 4 of the Act of 1926, *infra*, requires the marking of articles included in the first column of the First Schedule (see *ante*, p. 597) prepared for consignment, in the prescribed manner. It should be noted that whilst the civil provisions (see *ante*, p. 596) relate to articles listed in the First and Second Schedules, the liability to prosecution under section 4, *infra*, is limited to articles listed in the First Schedule only. The object of marking fertilisers and feeding-stuffs is to avoid the necessity to label parcels with long descriptions of the composition of such articles, by the use of a mark, the explanation of which must be kept in the register on the premises and held available for inspection at all reasonable times. For example, the letters "X.Y.Z." marked on a parcel of fertiliser may, on reference to the register, be found to identify a fertiliser containing three constituents, each present in varying proportions recorded in the register. The "mark," which is of value to the inspector of the local authority only, is the key to the entry in the register, to which the inspector refers when he wishes to obtain particulars of the particular parcel in question.

Section 4, Fertilisers and Feeding Stuffs Act, 1926.—Marking of articles prepared for consignment.

- (1) Every parcel of an article included in the first column of the First Schedule to this Act when prepared for sale or consignment for use as a fertiliser of the soil or as a food for cattle or poultry shall, if exposed for sale, or, if not exposed for sale, before being removed from the premises where it is prepared, be marked in the prescribed manner with a mark or marks stating or indicating the particulars required by this Act to be contained in the statutory statement.
- (2) Any person dealing in any such parcels may for the purposes of this section keep in such form (if any) as may be prescribed a register of marks specifying the particulars which the several marks entered in the register are used as indicating, and the marking of any parcel with any mark entered in the register shall, for the purposes of this section, be treated as indicating that the particulars of the article are those entered in the register in relation to that mark :

Provided that—

- (a) on the sale of any parcel so marked the mark shall be added to the statutory statement ; and
 - (b) where the statutory statement received by the seller on the sale to him of the parcel contains any such mark, and the parcel has not been on his premises, that mark shall be added by him to the statutory statement required to be given by him to a purchaser.
- (3) If any parcel required under this section to be marked is not so marked, or if from the analysis of a sample of the parcel taken by an inspector in the prescribed manner on the premises on which the parcel is exposed for sale, or on any premises on which the parcel after having been so marked may happen to be before being delivered to a purchaser or carrying agent, it appears that the particulars marked or indicated by a mark are false to the prejudice of the purchaser, or do not include any particulars which are required by this Act to be contained in the statutory statement, the person selling or having in his possession or disposition for the purpose of sale or consigning the parcel or exposing it for sale shall be guilty of an offence against this Act.

It will be seen that in the normal case the particulars to be marked upon parcels in accordance with section 4, *supra*, are the same as those which comprise the statutory statement (see *ante*, p. 596), *viz.* :—

- 1—name of the article ;
- 2—particulars prescribed in the second column of the First Schedule (see *ante*, p. 597) ; and
- 3—in the case of a feeding-stuff which contains an ingredient included in the Third Schedule (see *ante*, p. 602), the name of that ingredient.

In the case of imported goods, however, the provisions of section 5 of the Act of 1926, *infra*, apply.

The methods of marking for the purposes of section 4, *supra*, have been prescribed by the Minister(a) as follows :—

The parcel must be marked in writing (including printing and stencilling) on the article itself or on the wrapper or container of the package or packages composing the parcel, or by means of a label securely attached to the package or placed inside the package, or in such manner as clearly to identify the label with the parcel in question ;

Provided that :

- (a) the marking shall be legible ;
- (b) every parcel shall be marked in such manner that the parcel shall remain marked so long as it is on the premises where it has been marked ; and
- (c) where a parcel consists of a number of packages and the packages or any of them are not marked, the parcel shall be marked by a mark entered in a register in accordance with section 4(2) of the Act, *supra*.

The register of marks kept in accordance with section 4(2), *supra*, must be kept in such form that the particulars required by that section, relating to each separate parcel or

consignment, may be readily ascertainable by an inspector^(b). The following specimen form of register has been issued by the Ministry^(c) :—

Specimen Form of Register of Marks (Regulation 5).

Fertilisers and Feeding Stuffs Act, 1926.

Mark.	Particulars which the Mark is used to indicate.	
	Name of Article.	Particulars required by (b) and (c) of Section 1(1).

Note.—Additional columns for further particulars may be provided, as desired, by the person keeping the register.

Where a person fails to add to a statutory statement any mark required to be added by section 4(2), *supra*, he is liable to a fine not exceeding £5 for a first offence and £10 for a subsequent offence^(d).

Consignments ex ship or quay.—Special provisions relating to consignments *ex ship* or quay are contained in section 5 of the Act of 1926, *infra*, but such apply only to articles named in the first column of the First Schedule (see *ante*, p. 597).

Section 5, Fertilisers and Feeding Stuffs Act, 1926.—*Consignments ex ship or quay.*

- (1) In the case of an article delivered or consigned direct from a ship or quay to a purchaser, the provisions of this section shall apply in lieu of the provisions of the last preceding section.
- (2) The seller of an article included in the first column of the First Schedule to this Act and so delivered or consigned shall as soon as practicable enter in a register kept by him in such form (if any) as may be prescribed the following particulars :—
 - (a) the date of delivery or consignment to the purchaser, the place of delivery to the purchaser or other destination, and the quantity delivered or consigned ;

(b) S.R. and O., 1932, No. 658, Art. 5.

(c) Circular letter, 12th June, 1928, Ministry of Agriculture and Fisheries, para. 16.

(d) Sect. 8(3), Fertilisers and Feeding Stuffs Act, 1926 ; 1 Halsbury's Statutes 146.

Sales in small quantities.—Where sales of small quantities(*g*) take place an inspector may take a sample in the prescribed manner (see *ante*, p. 574) on the premises where the parcel is kept, and if the analysis shows that the particulars stated on the label are false to the prejudice of the purchaser, or do not include any particulars which are required by the Act to be contained in a statutory statement, the owner or seller is guilty of an offence under the Act(*h*). It should be noted that this provision applies to articles listed in column 1 of the First and Second Schedules in respect of which statutory statements must be given.

Deleterious ingredients in feeding-stuffs.—Section 7 of the Act of 1926, *infra*, makes it an offence against the Act to sell, etc., for use as food for cattle or poultry any article which contains any ingredient deleterious to such animals. It should be noted that this section applies to all animal feeding-stuffs and not only to those listed in the Schedules to the Act.

Section 7, Fertilisers and Feeding Stuffs Act, 1926.—Deleterious ingredients in feeding-stuffs.

- (1) Any person who sells or offers or exposes for sale for use as food for cattle or poultry any article which contains any ingredient deleterious to cattle or poultry, or has in his possession, packed and prepared, for sale for such use any such article, shall be guilty of an offence against this Act unless he proves—
 - (a) that he did not know and could not with reasonable care have known that the article contained a deleterious ingredient; and
 - (b) where he obtained the article from some other person, that on demand by or on behalf of the prosecutor he gave all the information in his power with respect to the person from whom he obtained it, and as to the statutory statement given to him, and as to any mark applied to the article when he obtained it:

Provided that proceedings for an offence under this section shall not be instituted unless the article has been sampled by an inspector in the prescribed manner on the premises on which it was sold or exposed or offered for sale or on which it was when prepared for sale or consignment, and the sample has been analysed in accordance with the provisions of this Act.

- (2) Any substance mentioned in the Fifth Schedule shall, if present in a feeding-stuff or, where a maximum quantity with regard to the substance is indicated in the Fifth Schedule, if present in excess of that quantity, as the case may be, be deemed to be a deleterious ingredient unless the contrary is proved.

(*g*) 56 lbs. or less—sect. 1(1)(ii), Fertilisers and Feeding Stuffs Act, 1926; 1 Halsbury's Statutes 141.

(*h*) *Ibid*, sect. 6; 1 Halsbury's Statutes 144.

The deleterious ingredients defined in the Fifth Schedule(i) are as follows :—

Fifth Schedule, Fertilisers and Feeding Stuffs Act, 1926.—Deleterious ingredients in feeding-stuffs.

- (a) Salts soluble in water, if present in a feeding-stuff in proportion likely to be injurious to the health of animals.
- (b) All poisonous substances except those naturally present in the material or materials from which the feeding-stuff is derived.
- (c) Sand, siliceous matter or other insoluble mineral matter not naturally associated with ingredients of the feeding-stuff which do not fall within the scope of this Schedule, or which, even if naturally so associated, are present in greater proportion than the maximum that may be expected to be due to such natural association.

For the purposes of this paragraph the term “ insoluble ” shall imply insolubility, as determined by a prescribed method ; the term “ natural association ” shall be construed as applying to average commercial samples of the feeding material with which it may be claimed that a particular mineral ingredient is associated.

OFFENCES AGAINST THE ACT OF 1926.

Section 8 of the Act of 1926(k) prescribes the penalties for failure to give, and mis-statements in, statutory statements. In the case of a first offence the penalty is a fine not exceeding £5, and in the case of subsequent offences a fine not exceeding £10. Where a person sells an article included in the first column of the First Schedule to the Act of 1926 (see *ante*, p. 597) and gives a statutory statement in which the particulars stated therein differ—

- (a) from the particulars marked or indicated by a mark placed on a parcel of the article in accordance with the Act ; or
- (b) in the case of an article delivered or consigned direct from a ship or quay to a purchaser, from the particulars entered in accordance with the Act in the seller's register (see *ante*, p. 617) ; or
- (c) in the case of an article which has not been on the premises of the seller, from the particulars stated in the statutory statement given to the seller in respect of the article ;

he is guilty of an offence against the Act unless he proves that he took all reasonable steps to avoid committing the offence and that he acted without intent to fraud.

A person guilty of an offence against the Act of 1926, for which a special penalty is not laid down, is liable, on summary conviction, to a penalty not exceeding £20 and in the case of a subsequent offence to a fine not exceeding £50(l).

(i) As amended by Art. 15, Fertilisers and Feeding Stuffs Regulations, 1932 ; S.R. and O., 1932, No. 658.

(k) 1 Halsbury's Statutes 145.

(l) Sect. 19, Fertilisers and Feeding Stuffs Act, 1926 ; 1 Halsbury's Statutes 151.

LEGAL PROCEEDINGS.

Proceedings may be taken, as the prosecutor desires, at the place where the person charged resides or carries on business^(m). It is no defence to allege that a sample having been taken for analysis only, the purchaser was not prejudiced⁽ⁿ⁾.

Legal proceedings may be instituted by—

- 1—the person aggrieved ;
- 2—the county or county borough council ;
- 3—an inspector of the county or county borough council if authorised by the council to do so ; or
- 4—the Minister, where a sample has been taken by one of his inspectors^(o),

subject to the consent of the Minister being obtained in those cases covered by section 20(1) of the Act of 1926, *infra*, and listed below. Such consent will not be given until the Government Chemist has analysed the second portion of the sample retained by the agricultural analyst.

Section 20, Fertilisers and Feeding Stuffs Act, 1926.—Restrictions on taking Proceedings.

- (1) Proceedings for any offence against this Act to which the last foregoing section applies shall not be commenced without the consent of the Minister ; and where the proceedings are in respect of causing or permitting any name, mark or particulars (except particulars which are not required to be contained in a statutory statement) to be false, or in respect of failure to include in the particulars marked or indicated by a mark or entered in a register or written on a label, any particulars which are required by this Act to be contained in the statutory statement, or in respect of the presence in a feeding-stuff of any deleterious ingredient, the consent of the Minister shall not be given until the part of the sample retained by the agricultural analyst has been analysed and a certificate of analysis given by the Government Chemist.
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It should be observed that there are three classes of offences under the Act of 1926 and the following is a summary of the three categories :—

1—Offences requiring consent of Minister and analysis of sample.

Section.	Offence.
4(3)	Omission from mark on parcel of any particulars required to be contained in statutory statement.
-	False mark on parcel.
5(3)(c)	Omission from register (in case of consignment <i>ex ship</i>) or any particulars required to be contained in statutory statement.
	False entry in register.

^(m) Fertilisers and Feeding Stuffs Act, 1926, sect. 21(1) ; 1 Halsbury's Statutes 152.
⁽ⁿ⁾ *Ibid*, sect. 21(2) ; 1 Halsbury's Statutes 152.
^(o) *Ibid*, sect. 21(3) ; 1 Halsbury's Statutes 152.

Section.

Offence.

- | | |
|---|---|
| 6 | Omission from label (under special provision for sales of small quantities) of any particular required to be contained in statutory statement.
False particulars on label. |
| 7 | Selling a feeding-stuff for cattle or poultry which contains an ingredient deleterious for that purpose. |

2—Offences requiring consent of Minister but not an analysis of sample.

Section.

Offence.

- | | |
|---------|--|
| 4(3) | Failure to mark parcel. |
| 5(3)(a) | Failure to enter in register particulars, other than those required to be contained in the statutory statement, in respect of consignment <i>ex</i> ship. |
| 5(3)(b) | False entry in register in respect of consignment <i>ex</i> ship. |
| 8(2)(a) | Giving statutory statement containing particulars differing from those marked on parcel. |
| 8(2)(b) | Giving statutory statement in case of article consigned <i>ex</i> ship, containing particulars differing from those entered in the register. |
| 8(2)(c) | Giving statutory statement in case of article which has not been on premises of seller, containing particulars differing from those stated in statutory statement given to seller. |

3—Offences in which the consent of the Minister is not required nor an analysis of a sample.

Section.

Offence.

- | | |
|-------|---|
| 8(1) | Failure to give statutory statement. |
| 8(3) | Failure to add to statutory statement any mark required to be added. |
| 9(1) | Failure to preserve register or statutory statement for prescribed period. |
| 9(2) | Failure to produce register or statutory statement on demand by inspector. |
| 14(a) | Tampering with article so as to procure that sample is not representative of the article. |
| 14(b) | Tampering or interfering with sample taken. |
| 15 | Refusal to allow inspector to take sample or other wilful delay or obstruction. |
| 16 | Improper disclosure by inspector of information obtained in exercise of his powers under the Act. |

Defences available.—Where proceedings are taken in respect of causing or permitting any name, mark or particulars to be false, or for making a false entry in the register or for failure to state the presence in a feeding-stuff of an ingredient included in the Third Schedule to the Act (see *ante*, p. 602) it is a good defence if the person charged proves—

- 1—that having taken all reasonable precautions against committing an offence against this Act he had not at the time of committing the alleged offence reason to suspect the correctness of the mark or entry, or the presence of such ingredient, as the case may be ; and

2—where he obtained the article from some other person, that on demand by or on behalf of the prosecutor he gave all the information in his power with respect to the person from whom he obtained it and as to the statutory statement given to him, and as to any mark applied to the article when he obtained it(*p*).

Limit of time for institution of proceedings.—A prosecution in respect of causing or permitting any name, mark or particulars to be false or in respect of the presence of any ingredient included in the Third Schedule (see *ante*, p. 602), or of any deleterious ingredient (see *ante*, p. 618), may not be instituted after the expiration of three months from the date on which a sample of the article was taken in the prescribed manner(*q*).

Summons.—The summons must state the particulars of the offence, the name of the prosecutor and be returnable not earlier than fourteen days from the date on which it is served. A copy of any certificate of the agricultural analyst obtained on behalf of the prosecutor must be served with the summons(*r*).

Relief from liability under the Merchandise Marks Acts.—Where in pursuance of sections 1 to 9 of the Act of 1926 a description has been applied to any article included in column 1 of the First Schedule (see *ante*, p. 597) and such description is a trade description for the purposes of the Merchandise Marks Act, 1887(*s*), no proceedings may be taken under that Act on the ground that the description so applied is a false trade description(*t*).

REGULATIONS.

The powers of the Minister to make Regulations with respect to fertilisers and feeding-stuffs are contained in section 23 of the Act of 1926, *infra*.

Section 23, Fertilisers and Feeding Stuffs Act, 1926.—Regulations.

- (1) The Minister and the Board of Agriculture for Scotland jointly may, after consultation with the advisory committee to be constituted under this section, make regulations for prescribing anything which under this Act is required or authorised to be prescribed, and generally for carrying this Act into operation ; and in particular such regulations may provide—
 - (a) for varying any of the schedules to this Act ;
 - (b) for prescribing the manner in which articles required to be marked under this Act are to be marked and the nature of such marks ;

(*p*) Fertilisers and Feeding Stuffs Act, 1926, sect. 20(2) ; 1 Halsbury's Statutes 151.

(*q*) *Ibid.*, sect. 20(3) ; 1 Halsbury's Statutes 151.

(*r*) *Ibid.*, sect. 20(4) ; 1 Halsbury's Statutes 151.

(*s*) 19 Halsbury's Statutes 832.

(*t*) Sect. 10, Fertilisers and Feeding Stuffs Act, 1926 ; 1 Halsbury's Statutes 146.

- (c) for prescribing the limits of variation for the purposes of this Act ;
 - (d) for prescribing the manner in which samples are to be taken and dealt with in cases where under this Act they are taken in the prescribed manner ;
 - (e) as to the method in which analyses for determining the percentages of particular substances are to be made ;
 - (f) as to the qualifications to be possessed by agricultural analysts and deputy agricultural analysts and as to the form of certificates of analysis given by them ;
- and where any schedule is varied by regulations so made, this Act shall have effect as if the schedule as so varied were substituted for the schedule contained in this Act.
- (2) For the purpose of assisting and advising them with respect to the making of regulations under this Act, the Minister and Board shall, after consultation with such associations as appear to them to represent the interests concerned, jointly appoint an advisory committee.
 - (3) All regulations made under this section shall be laid before Parliament as soon as may be after they are made, and if either House of Parliament, within the next subsequent twenty-one days on which that House has sat next after the regulations are laid before them, presents an address to His Majesty praying that the regulations or any part of them may be annulled, they shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder or to the making of new regulations.

The present Regulations were made in 1932(*u*).

EMERGENCY PROVISIONS.

During the war emergency—

(1) **Fertilisers** are controlled under the Control of Fertilisers Orders, 1939(*v*), and the Control of Fertilisers (No. 1) Order, 1939, Direction No. 3(*w*) ; and

(2) **Feeding-stuffs** are controlled under the Feeding Stuffs (Provisional Control) Order, 1939(*x*), the Feeding Stuffs (Licensing and Control) Order, 1940(*y*) and the General Licence—Feeding Stuffs(*z*).

(*u*) S.R. and O., 1932, No. 658.

(*v*) S.R. and O., 1939, Nos. 1585 and 1869.

(*w*) S.R. and O., 1940, No. 256.

(*x*) S.R. and O., 1939, No. 1213, amended by S.R. and O., 1940, No. 70.

(*y*) S.R. and O., 1940, No. 154.

(*z*) S.R. and O., 1940, No. 155.

CHAPTER 24.

GRADING OF AGRICULTURAL PRODUCE.

The Agricultural Produce (Grading and Marking) Act, 1928(*a*), and the Agricultural Produce (Grading and Marking) Amendment Act, 1931(*b*), provide for the grading and marking of agricultural produce. The provisions of these Acts are in addition to and not in derogation of any other enactment relating to or affecting merchandise marks or the sale of any article to which the Acts apply(*c*), so that proceedings can be taken under the Food and Drugs Act, 1938, or other enactment dealing with foodstuffs.

GRADE DESIGNATIONS.

The Minister of Agriculture may by regulations prescribed "grade designations" as he considers appropriate to indicate the quality of any article of agricultural produce or fishery produce and such regulations must contain a definition—the "statutory definition"—of the quality indicated by every grade designation. Where any person sells an article to which a grade designation applies, then, notwithstanding any contract or notice to the contrary, it is deemed to be a term of the contract of sale that the quality of the article accords with the statutory definition indicated by the grade designation, which is deemed to be applied to an article if it is used by or on behalf of the vendor, when the article is sold or delivered or exposed or offered for sale, in any manner calculated to lead to the belief that the quality of the article in connection with which it is used accords with the statutory definition indicated by the grade designation(*d*). The reference to fishery produce was added by the Amending Act of 1931(*e*).

The expressions "agricultural produce" and "fishery produce" include respectively all produce of agriculture or horticulture and of the fishing industry, all articles of food or drink wholly or partly manufactured or derived from any such produce and fleeces and the skins of animals(*f*).

In accordance with the Agricultural Produce (Grading and Marking) (General) Regulations, 1928(*g*), a National Mark Committee was established for the authorisation of the use of

(*a*) 1 Halsbury's Statutes 165.

(*b*) 24 Halsbury's Statutes 8.

(*c*) Sect. 9, Agricultural Produce (Grading and Marking) Act, 1928 ; 1 Halsbury's Statutes 169.

(*d*) *Ibid*, sect. 1 ; 1 Halsbury's Statutes 165.

(*e*) Sect. 1, Agricultural Produce (Grading and Marking) Act, 1931 ; 24 Halsbury's Statutes 8.

(*f*) Sect. 7, Agricultural Produce (Grading and Marking) Act, 1928, as amended by sect. 8, Agricultural Produce (Grading and Marking) Act, 1931 ; 24 Halsbury's Statutes 9.

(*g*) S R. and O., 1928, No. 674

prescribed grade designation marks. The design invariably incorporates what is known as the "National Mark," consisting of a Union Jack superimposed on a map of England and Wales. The Ministry of Agriculture and Fisheries have published a list of approved retailers of National Mark Produce^(h) and particulars of grading and marking schemes are contained in the following Marketing Leaflets :—

<i>No.</i>	<i>Product.</i>
6	Eggs.
12	All-English wheat flour.
12	(Addendum) wheat flakes.
13	Home-killed beef.
14	Malt extract and malt flour.
17	Dressed poultry.
20	Canned fruit and vegetables.
22	Cider.
29	Bottled fruit and vegetables.
31	Honey.
36	Jam.
43	Cheshire cheese.
53	Fruit products.
55	Perry.
58	Fresh vegetables.
59	Fresh fruit.
77	Stilton cheese.
78	Creamery butter.
80	Caerphilly cheese.
81	Cheddar cheese.
83	Cream cheese.
84	Wensleydale cheese.
85	Leicester cheese ⁽ⁱ⁾ .

The following regulations have been made by the Minister of Agriculture and Fisheries in accordance with section 1 of the Agricultural Produce (Grading and Marking) Act, 1928 :—

<i>Product.</i>	<i>Reference.</i>
Apples	S.R. and O., 1933, No. 931 ; and S.R. and O., 1935, No. 976.
Asparagus	S.R. and O., 1934, No. 151.
Beef	S.R. and O., 1931, No. 632.
Black currants	S.R. and O., 1935, No. 19.
Bottled fruits	S.R. and O., 1935, No. 798.
Bottled vegetables	S.R. and O., 1935, No. 799.
Brussels sprouts	S.R. and O., 1933, No. 844.
Cabbage greens and cabbages	S.R. and O., 1934, No. 204 ; and S.R. and O., 1937, No. 279.
Cabbage lettuce	S.R. and O., 1933, No. 90.
Canned fruits	S.R. and O., 1934, No. 719 ; and S.R. and O., 1935, No. 750.
Canned vegetables	S.R. and O., 1937, No. 912.
Carrots	S.R. and O., 1934, No. 221.
Cauliflower and broccoli ..	S.R. and O., 1934, No. 72.

(h) Marketing Leaflet No. 62.

(i) The leaflets may be obtained free of charge, on application to the Secretary, Ministry of Agriculture and Fisheries, 10 Whitehall Place, London S.W.1.

<i>Product.</i>	<i>Reference.</i>
Celery	S.R. and O., 1933, No. 893.
Cheddar cheese	S.R. and O., 1935, No. 1168.
Cherries	S.R. and O., 1930, No. 462.
Cheshire cheese	S.R. and O., 1933, No. 677.
Cider	S.R. and O., 1932, No. 705.
Cream cheese	S.R. and O., 1935, No. 1351.
Creamery butter	S.R. and O., 1935, No. 72.
Derby cheese	S.R. and O., 1937, No. 122.
Dressed poultry	S.R. and O., 1933, No. 884 ; and S.R. and O., 1935, No. 1234.
Eggs	S.R. and O., 1936, No. 1027 ; and S.R. and O., 1937, No. 90.
Forced rhubarb	S.R. and O., 1934, No. 625.
Fruit-juice syrups	S.R. and O., 1937, No. 788.
Glasshouse-grown tomatoes and cucumbers	S.R. and O., 1935, No. 20.
Gooseberries	S.R. and O., 1933, No. 564.
Green peas	S.R. and O., 1933, No. 693.
Honey	S.R. and O., 1934, No. 1337.
Horse-radish	S.R. and O., 1934, No. 503.
Hot-house grapes	S.R. and O., 1934, No. 1388.
Jam	S.R. and O., 1934, No. 720.
Kidney and runner beans	S.R. and O., 1934, No. 517.
Lancashire cheese	S.R. and O., 1937, No. 876.
Leeks	S.R. and O., 1934, No. 198.
Leicester cheese	S.R. and O., 1936, No. 328 ; and S.R. and O., 1937, No. 1020.
Loganberries	S.R. and O., 1933, No. 565.
Malt extract and malt flour	S.R. and O., 1936, No. 309.
Mushrooms	S.R. and O., 1934, No. 602.
Natural rhubarb	S.R. and O., 1934, No. 1353.
Parsnips	S.R. and O., 1934, No. 481.
Pears	S.R. and O., 1933, No. 932.
Perry	S.R. and O., 1935, No. 462.
Plums	S.R. and O., 1937, No. 632.
Potatoes	S.R. and O., 1929, No. 1117.
Radishes	S.R. and O., 1934, No. 199.
Raspberries	S.R. and O., 1933, No. 566.
Red beet	S.R. and O., 1934, No. 200.
Red currants	S.R. and O., 1933, No. 567.
Ripe onions and shallots	S.R. and O., 1934, No. 482.
Salad (Spring) onions	S.R. and O., 1934, No. 205.
Stilton cheese	S.R. and O., 1934, No. 1354.
Strawberries	S.R. and O., 1930, No. 340.
Turnips and swedes	S.R. and O., 1934, No. 483.
Vegetables	S.R. and O., 1935, No. 107.
Watercress	S.R. and O., 1934, No. 492.
Wensleydale cheese	S.R. and O., 1936, No. 522 ; and S.R. and O., 1937, No. 975.
Wheat flour	S.R. and O., 1933, No. 592 ; S.R. and O., 1935, No. 797 ; and S.R. and O., 1937, No. 711.

The above Regulations apply only to home-produced articles ; the marking of imported produce is governed by Marking Orders made under the Merchandise Marks Act, 1926, as to which see Chapter 13, *ante*, p. 343.

GRADE DESIGNATION MARKS.

The Regulations made by the Minister of Agriculture under section 1 of the Act of 1928 (see *ante*, p. 624) may prescribe a "grade designation mark" to represent any grade designation^(k) and conditions may be attached, including conditions as to the payment of any expenses incurred by the Minister, or by any person or body of persons authorised, in connection with the manufacture or use of any die, block, machine or other instrument requisite for the purpose of the reproduction of the mark, or with the manufacture or use of any covering or label marked therewith^(l).

The use of a grade designation mark is deemed to be the use of a grade designation for the purposes of section 1 of the Act of 1928^(m). The forging of a grade designation mark renders the person concerned liable to a penalty not exceeding £20 or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both imprisonment and fine⁽ⁿ⁾. A penalty not exceeding £20 is incurred on marking any article with a grade designation mark unless the person doing so has the necessary authority^(o).

It is an offence to use, in connection with any article whatsoever, any mark or description of such a character or in such manner as to be calculated by reason of the resemblance of that mark or description to a grade designation mark or of any prescribed part of such a mark or by reason of that mark or description being or incorporating the words "National Mark" or otherwise, to lead to a false belief that the article is an article of a class to which a grade designation mark has been applied by Regulations. An offence is not committed, however, if it is proved that the mark or description was used or registered^(p) in connection with the article in question before the 17th June, 1931, or was used in connection with any article before the prescription under the Act of 1928 of any grade designation mark or prescribed part of such a mark resembling that mark or description^(q).

(k) Sect. 2(1), Agricultural Produce (Grading and Marking) Act, 1928 ; 1 Halsbury's Statutes 166.

(l) Sect. 3, Agricultural Produce (Grading and Marking) Act, 1931 ; 24 Halsbury's Statutes 9.

(m) Sect. 2(2), Agricultural Produce (Grading and Marking) Act, 1928 ; 1 Halsbury's Statutes 166.

(n) *Ibid*, sect. 2(3) ; 1 Halsbury's Statutes 166.

(o) *Ibid*, sect. 2(4) ; 1 Halsbury's Statutes 166.

(p) "Registered" means registered under the Trade Marks Acts, 1905 to 1919 ; sect. 4(1), Agricultural Produce (Grading and Marking) Act, 1931 ; 24 Halsbury's Statutes 9.

(q) Sect. 4(1), Agricultural Produce (Grading and Marking) Act, 1931 ; 24 Halsbury's Statutes 9.

MARKING OF PRESERVED EGGS.

It is an offence to sell or expose for sale any egg(*r*) which has been subjected to any process of preservation unless it is marked in the prescribed manner, but the Minister of Agriculture has power to exempt from marking eggs preserved by any process with respect to which he is satisfied that the marking of eggs preserved by that process cannot be enforced(*s*).

The "prescribed manner" of marking preserved eggs is laid down in the Agricultural Produce (Grading and Marking) (Eggs) Regulations, 1936(*t*), and the Agricultural Produce (Grading and Marking) (Eggs) (Amendment) Regulations, 1937(*u*). An Order (*v*) has been made exempting from the marking provisions set out above, eggs which have been kept in cold storage or chemical storage(*w*).

During the war emergency the provisions of section 3 of the Act of 1928, *supra*, do not apply to—

- i—any hen or duck eggs in shell which have been laid in the United Kingdom ; or
- ii—any hen or duck eggs in shell which have been imported into the United Kingdom from the U.S.A. or from any of the British Dominions, except eggs which have been marked with the word "cooking" in pursuance of any law of the Union of South Africa relating to the export of eggs(*x*).

COLD AND CHEMICAL STORAGE OF EGGS.

Section 4 of the Act of 1928, *infra*, provides for the registration of premises to be used for the cold storage or chemical storage of eggs, such to be effected by the county or county borough council in whose area the premises are situated.

Section 4, Agricultural Produce (Grading and Marking) Act, 1928.—Cold and chemical storage of eggs.

- (1) Any premises used or intended to be used by way of trade or for purposes of gain for the cold storage or chemical storage of eggs may be registered in the prescribed manner in a register kept by the council of the county or county borough in which the premises are situated, in accordance with regulations made by the Minister under this Act.
- (2) If and so long as any Order in Council made under section two of the Merchandise Marks Act, 1926, is in force prohibiting the sale or the exposure for sale in the United Kingdom of

(*r*) "Egg" means an egg laid by a domestic fowl or domestic duck ; sect. 7, Agricultural Produce (Grading and Marking) Act, 1928 ; 1 Halsbury's Statutes 169.

(*s*) *Ibid*, sect. 3 ; 1 Halsbury's Statutes 166.

(*t*) S.R. and O., 1936, No. 1027.

(*u*) S.R. and O., 1937, No. 90.

(*v*) 16th October, 1928.

(*w*) "Chemical storage" means storage for the purpose of preserving eggs by any process which does not alter the composition of the shells, including storage in any gas, vapour or gaseous mixture—sect. 7, Agricultural Produce (Grading and Marking) Act, 1928 ; 1 Halsbury's Statutes 169.

(*x*) Paragraph 10, Defence (General) Regulations, 1939, Regulation 60CAA ; S.R. and O., 1944, No. 1311.

imported eggs unless they bear an indication of origin (see *ante* p. 348), the following provisions shall have effect, that is to say :—

- (a) no premises shall be used by way of trade or for the purposes of gain for the cold storage or chemical storage of eggs, unless the premises are registered premises, and, if any premises are used in contravention of the provisions of this section, the occupier of the premises shall be guilty of an offence under this section ;
- (b) it shall not be lawful to cause British eggs which have been kept in cold storage or chemical storage in any premises used for such storage of eggs by way of trade or for purposes of gain, to be removed from such premises unless the eggs have been marked in the prescribed manner, and for the purpose of securing the enforcement of this provision the Minister may, by notice in writing served on the occupier of any registered premises, give directions that British eggs which have been kept in cold storage or chemical storage in any part of the premises are not to be removed from such parts of the premises as may be specified in the notice until they have been marked in the prescribed manner, and a copy of any notice so served shall be kept by the occupier conspicuously posted in such parts of the premises as the Minister may direct ; if any person contravenes or fails to comply with the provisions of this paragraph, or of any directions given thereunder, he shall be guilty of an offence under this section :
- (c) an officer of the council of any county or county borough, if authorised in that behalf and on production if so required of his authority, may at any time during the hours when the premises are open for business enter any premises in which he has reason to believe that eggs are kept in cold storage or chemical storage, and may search for and inspect eggs in the premises, and may require any person whom he finds in or about the premises to give such information as may reasonably be demanded of him as to any name and address required by the officer for the purpose of enabling him to carry out his duties under this Act, and any person who obstructs an officer so authorised in the execution of the powers conferred on him by this section or wilfully withholds any information which any such officer is empowered by this Act to require of him shall be guilty of an offence under this section :
- (d) if any person removes, alters or obliterates any mark which, in compliance with the requirements of the foregoing provisions of this section, was borne by any egg at the time when it was stored in any such premises as aforesaid, or sells or exposes for sale any egg from which such a mark has been removed or on which such a mark has been altered or obliterated, he shall, unless he proves that he acted without intent to defraud, be guilty of an offence under this section, and in the case of a second or subsequent offence under this paragraph the court may, in addition to any other penalty, order any eggs in relation to which the offence has been committed to be forfeited :

- (e) any person guilty of an offence under this section shall be liable on summary conviction in the case of a first offence to a fine not exceeding five pounds, and in the case of a second or subsequent offence to a fine not exceeding twenty pounds.

During the war emergency the provisions of section 4, *supra*, are suspended(y).

The Merchandise Marks (Imported Goods) No. 5, Order, 1928(z), deals with the marking of imported eggs in shell, and it will be observed that the provisions of subsection (2) of section 4, *supra*, remain in force so long as the Marking Order made under the Merchandise Marks Act, 1926(a), is in force.

OFFENCES.

The following are the offences against the Agricultural Produce (Grading and Marking) Acts, 1928 and 1931 :—

- 1—Marking any article, covering or label with a grade designation unless authorised to do so by or under regulations—section 2(4) of the Act of 1928 (see *ante*, p. 627) ; penalty not exceeding £20 ;
- 2—Forgery of a grade designation mark, etc.—section 2(3) of the Act of 1928, as amended by section 4(2) of the Act of 1931 (see *ante*, p. 627) ; penalty not exceeding £20 or imprisonment up to three months, or both fine and imprisonment ; and
- 3—Using a mark or description similar to a grade designation mark likely to lead to a false belief that the article is one of a class to which a grade designation has been applied—section 4(1) of the Act of 1928 (see *ante*, p. 628) ; penalty on summary conviction £20 or imprisonment up to three months ; or, on conviction on indictment, imprisonment up to two years and/or a fine.

Proceedings in respect of offence (3) above, may not be instituted except by or with the consent of the Minister of Agriculture and Fisheries, or by a local authority charged with the enforcement of the Acts of 1928 and 1931 (see *infra*) or by an officer appointed by the Minister or by a council who have been authorised to institute proceedings, either generally or specially(b).

ENFORCEMENT OF ACTS OF 1928 AND 1931.

It is the duty of every county and county borough council to enforce the provisions of the Acts of 1928 and 1931, and

(y) Paragraph 11, Defence (General) Regs., 1939, Reg. 60CAA.

(z) S.R. and O., 1928, No. 1052 ; and see *ante*, p. 348.

(a) 19 Halsbury's Statutes 898.

(b) Sect. 4(1), Agricultural Produce (Grading and Marking) Act, 1931 , 24 Halsbury's Statutes 9.

they may appoint any necessary officers for the purpose. In London the Acts are enforced by the Common Council of the City of London and the metropolitan borough councils(c).

PROVISIONS WITH RESPECT TO REGULATIONS AND ORDERS.

Regulations and orders made under the Acts of 1928 and 1931 must be laid before Parliament. A copy of any notice served under the Acts on the occupier of any registered premises must be sent to the council responsible for the administration of the Acts in the area where the premises are situated(d).

(c) Sect. 5, Agricultural Produce (Grading and Marking) Act, 1928 : 1 Halsbury's Statutes 144.

(d) *Ibid*, sect. 6 ; 1 Halsbury's Statutes 144.

GENERAL INDEX.

Abbreviations used in Index.

C.C.	County Council.
D.A.A.	Diseases of Animals Acts.
F.D.A.	Food and Drugs Act.
F.F.A.	Fertilisers and Feeding Stuffs Act.
L.A.	Local Authority.
M.O.H.	Medical Officer of Health.
M. of A. & F.	Minister of Agriculture and Fisheries.
M. of H.	Minister of Health.
My. of A. & F.	Ministry of Agriculture and Fisheries.
My. of F.	Ministry of Food.
My. of H.	Ministry of Health.
R.D.C.	Rural District Council.
S.I.	Sanitary Inspector.
U.D.C.	Urban District Council.

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